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Report of the Special Rapporteur on the human rights of migrants on the impact of bilateral and multilateral trade agreements on the human rights of migrants

Note by the Secretariat

The Secretariat has the honour to transmit the report of the Special Rapporteur on the human rights of migrants, prepared pursuant to Human Rights Council resolution 17/12. In it, the Special Rapporteur expresses concern that, while trade liberalization has led to economic growth and social welfare generally, such progress has sometimes come at the expense of the human rights of migrants. Trade is not inherently negative, but the power imbalances, protectionism and national interests that influence the global economy have resulted in trade systems that exacerbate the precariousness of low-wage migrant workers and directly and systematically infringe upon their human rights. Facilitated and well-regulated mobility that is supported by comprehensive and robust institutional frameworks is necessary to ensure inclusivity and equity in the enjoyment of the benefits of trade for all migrants. In the report, the Special Rapporteur seeks to offer States practical guidance and engage international organizations, the private sector, trade unions and other civil society entities in the full realization of migrants' rights.

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I. Introduction

1. The present report is being submitted pursuant to Human Rights Council resolution 17/12. It briefly outlines the activities of the Special Rapporteur on the human rights of migrants from 1 April 2015 to 19 April 2016. The thematic section is dedicated to bilateral and multilateral trade agreements and their impact on the human rights of migrants.

II. Activities carried out by the Special Rapporteur

A. Participation in consultations and conferences

2. The Special Rapporteur was consulted by the Special Adviser on the Summit on Addressing Large Movements of Refugees and Migrants and provided oral and written input towards the development of her report on that issue.

3. The Special Rapporteur also participated and contributed to a number of international and regional dialogues and conferences, including a meeting of the Department of Economic and Social Affairs on international migration and a consultation among international organizations organized by the International Organization for Migration (IOM) in the framework of the Migrants in Countries in Crisis Initiative.

B. Country visits

4. Owing to the continued arrival of unprecedented numbers of irregular migrants to European borders, the Special Rapporteur has remained engaged in the issue. He visited Brussels in June 2015 to meet with representatives of European Union institutions and debrief them on the findings contained in his report on European Union border management (A/HRC/29/36). He provided suggestions on key European Union policy documents, such as the European Agenda on Migration and the report of the European Parliament Committee on Civil Liberties, Justice and Home Affairs on the situation in the Mediterranean and the need for a holistic European Union approach to migration. He also briefed the Interministerial Committee on Human Rights of Italy and the European Parliament Subcommittee on Human Rights.

5. The Special Rapporteur's visit to Australia in October 2015 was postponed to November 2016. He has reiterated his request to visit Nauru and looks forward to receiving a response and confirmation of the dates for a visit in November 2016. The Special Rapporteur looks forward to his visits to Angola and Greece in May 2016.

III. Impact of bilateral and multilateral trade on the human rights of migrants

A. Background

6. The precarious status and widespread exploitation of migrants, particularly low-wage workers, continues to be a matter of ongoing concern for the Special Rapporteur. As increasing attention has been given to the relationship between free trade and bilateral and multilateral investment agreements on human rights generally, the Special Rapporteur seeks to examine more closely the impact of trade on the human rights of migrants.

7. Migrant workers account for 150.3 million of the world's approximately 232 million international migrants, and it is expected that the number of workers crossing borders in search of security and employment will continue to increase.[1] The Special Rapporteur believes in the power of trade to catalyse economic growth and advance social welfare, but notes that trade has not always led to inclusive, equitable and sustainable development outcomes for all. World Bank estimates indicate that even a 3 per cent increase in migrant labour from developing to high-income countries during the period 2005-2025 would yield gains to the global economy of $356 billion.[2]

8. The Special Rapporteur understands that trade in itself is not the culprit of migration challenges, nor can it remedy all related ills, but he maintains that fostering a culture of transparency, accountability and ethical business practice while respecting the human rights of migrants can reap positive development outcomes. Over the past two decades, most Governments have concluded preferential trade agreements that incorporate human rights provisions. While this has been a positive development, it has also resulted in increased fragmentation in the interpretation of international human rights standards, as well as a prejudicial application of labour mobility arrangements and immigration laws, effectively infringing upon the human rights of migrant workers and their families. The Special Rapporteur's assessment includes not only the instabilities triggered by the power imbalances, protectionism and national interests that have become embedded in the international trade regime, but also the ways in which trade can serve as a vehicle for advancing human rights, development and better opportunities for all migrant workers.

9. In writing the present report, the Special Rapporteur recognizes the work of the following United Nations bodies, mechanisms and policy documents: the human rights treaty bodies, the universal periodic review, other special procedure mandate holders, the Special Representative of the Secretary-General on International Migration and Development, the International Labour Organization (ILO), the United Nations Conference on Trade and Development (UNCTAD), the High-level Dialogue on International Migration and Development, the Global Migration Group and the 2030 Agenda for Sustainable Development. The Special Rapporteur also recognizes the work of IOM and the Global Forum on Migration and Development.

10. The Special Rapporteur consulted a human rights impact assessment and scoping study currently being conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Economic Commission for Africa and Friedrich-Ebert-Stiftung on the Continental Free Trade Area. The Special Rapporteur also consulted experts from the United Nations, academia and civil society organizations.

B. Relationship between international trade and migration in the context of globalization

11. International trade is the exchange of goods or services between nations. The foundation of international trade law is established by international treaties and agreements, the domestic laws of a State party to a trade agreement, and case law on the resolution of trade disputes between States. Trade agreements may consist of bilateral and plurilateral arrangements or multilateral arrangements, and recent agreements have included chapters or protocols on investment.

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[1] International Labour Organization, *Global Estimates on Migrant Workers: Results and Methodology — Special Focus on Migrant Domestic Workers* (Geneva, International Labour Office, 2015).

[2] World Bank, *Global Economic Prospects: Economic Implications of Remittances and Migration* (Washington, D.C., 2006).

12. Traditionally, migration has only been regulated at the national level, with migration and trade considerations operating in separate spheres. With globalization, however, trade policies and migration policies have become more interconnected owing to the desire to liberalize economies and facilitate the mobility of labour between countries and regions. Migrants are rarely viewed as people with rights, but instead as "factors of production" in trade and may be "commoditized"[3] in terms of the services they can provide or the goods they can produce. Even in the current neoliberal economic climate, trade negotiators are often confronted with barriers, such as restrictive immigration policies, obstacles to visa issuance, discrimination against foreign workers and limited recognition of professional qualifications, that are shaped by fluctuating labour market needs and national security concerns.

13. Migration schemes, which also respond to regional variations in sectoral demands for labour and migratory patterns, have not managed to keep pace with the rapid increase in mobility. This has triggered a resurgence of non-traditional, precarious and informal types of work that exist beyond the regulatory framework, especially in economic sectors, such as domestic work, agriculture, food processing and packaging, construction, hospitality, health and elderly care, tourism, fisheries and extraction, that can be delocalized only with difficulty.

Limited treatment of migrants in multilateral trade negotiations

14. The General Agreement on Tariffs and Trade first introduced the concept of a multilateral trading system founded on the principles of non-discrimination and reciprocity. Adopted after the end of the Second World War, the Agreement aimed to significantly reduce tariffs and barriers to trade worldwide.

15. The Uruguay round of negotiations (1986-1994) ambitiously sought to expand the competence of the General Agreement on Tariffs and Trade into new areas, such as trade in services, capital, intellectual property, textiles and agriculture, but focused almost exclusively on persons linked to a commercial presence (intra-corporate transferees) and high-skilled labour. Limited mention of labour in the multilateral system occurs in the General Agreement on Trade in Services, mode IV, specifically article I:2 (d), which covers the mobility of "natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service". According to the annex on movement of natural persons supplying services under the Agreement, mode IV does not concern itself with individuals seeking access to the employment market in the destination country, nor does it affect processes regarding citizenship, residence or employment on a permanent basis.

16. While some States have insisted that the World Trade Organization (WTO) address the issue of "social dumping" through the inclusion of trade provisions requiring States parties to observe minimum workers' rights, the responsibility of regulating labour standards has been kept outside of multilateral trade negotiations.

17. Since 2001, several attempts have been made during the Doha round to expand the classes of workers covered by the General Agreement on Trade in Services, by recognizing developing countries' comparative advantage across specific service sectors and abandoning the economic needs test, which leaves States wide discretion on which workers to admit. Even after the 2015 WTO ministerial conference in Nairobi, however, negotiations have still not resulted in solid commitments to low-wage labour.

[3] See the Declaration concerning the Aims and Purposes of the International Labour Organization, in which the ILO General Conference reaffirmed that labour is not a commodity.

Trend towards regionalism and the growth of preferential trade agreements

18. With global discussions on trade stalled at WTO, there has been a marked surge in the number of regional and preferential trade agreements. By 2013, the number of such agreements had more than quadrupled, with all WTO members being a party to at least one preferential trade agreement.[4] As of 1 February 2016, WTO had received 625 notifications of regional trade agreements, of which 425 are currently in force.[5]

19. Regional and preferential trade agreements reflect a continuum of approaches to labour mobility. The Common Market for Eastern and Southern Africa (COMESA), the European Economic Area, the European Free Trade Association and the European Union allow for full mobility of labour across sectors. This is particularly salient since migration predominantly occurs between countries within the same geographic region. In 2015, 87 per cent of migrants living in Africa originated from another country in the region, compared with 82 per cent of migrants in Asia, 66 per cent of migrants in Latin America and the Caribbean and 53 per cent of migrants in Europe.[6]

20. As tariffs have been reduced around the world, the central focus of trade has shifted to advancing economic integration and the penetration of certain sectors. Recent preferential trade agreements are increasingly adopting migration governance mechanisms such as visa and asylum request procedures and provisions similar to those contained in mode IV of the General Agreement on Trade in Services, or expanding the coverage of the Agreement; migrant return guarantees; institutionalized recruitment; and skills-testing. That said, these agreements are still dictated by the geopolitical interests of high-income countries, which favour high-skilled workers and temporary employment.

21. The Special Rapporteur reiterates his concern that a dependence upon discretionary and unilaterally defined admissions, as well as a lack of legal entitlements, endangers human rights and engenders a precariousness that leaves migrant workers vulnerable to exploitation and abuse. Facilitated and well-regulated mobility mechanisms are necessary to protect the human rights of migrants and to realize the numerous benefits of trade and migration, which include economic growth, the creation of jobs, increased competitiveness and innovation.

IV. International trade agreements and their impact on the human rights of migrants

22. The scope of the human rights protections afforded migrants in international trade agreements has been determined by whether international commercial treaties reference a specific human rights or labour instrument and the manner in which the protection is operationalized or enforced.

23. The following sections will address both the direct and structural impact of bilateral and multilateral trade agreements on the human rights of migrants. The complexities resulting from the current tendency towards regionalism and preferentialism in concluding international trade agreements, combined with few empirical studies on the trade-human rights nexus, render it difficult to determine the exact impact of trade on migrants. Accordingly, the information available will be presented and areas for further consideration by the Special Rapporteur will be identified. Themes that have already been addressed by

[4] WTO database on preferential trade agreements (ptadb.wto.org).

[5] See https://www.wto.org/english/tratop_e/region_e/region_e.htm.

[6] United Nations, Department of Economic and Social Affairs, "Trends in international migration, 2015", No. 2015/4 (December 2015).

the Special Rapporteur in his previous reports on labour exploitation (A/HRC/26/35) and recruitment practices (A/70/310) will be mentioned briefly in the context of international trade. Examples of good practices and key features of existing trade agreements towards the full realization of human rights are provided throughout the present report.

A. Direct impact on the rights of migrants

Constraints on freedom of movement

24. International human rights law recognizes the right of any individual to freedom of movement within the borders of his or her country, as well as the right to leave his or her country and return. Admittedly, there is no corresponding right to enter into the territory of another State, and States retain the sovereign authority to regulate immigration. Still, even when making immigration decisions, under international law States are still required to respect, promote and fulfil their human rights obligations to all, regardless of their status.

25. The Special Rapporteur is concerned that, in spite of the protections for migrants contained in the international human rights framework, transnational migration laws and regulations have been restrictive and segmented by skill, rather than protective. Within the multilateral framework, the liberalization of temporary workers under the General Agreement on Trade in Services covers only 5 per cent of world services trade. Moreover, of the few commitments that were made by States in mode IV of the Agreement, only 17 per cent relate to low-skill trade for temporary workers.[7] Conversely, 70 per cent target high-skilled services occupations, 25 per cent target executives, managers and specialists, and 43 per cent cater to intra-corporate transferees.[8]

26. Despite a global boom in labour mobility agreements during the 1990s, geographic biases prevailed, reinforcing power imbalances between sending and receiving States, rather than remedying them. States members of the Organization for Economic Cooperation and Development (OECD) registered a fivefold increase in the number of bilateral labour mobility agreements and Latin American countries doubled their numbers; countries in Asia and Africa, on the other hand, failed to register the same figures.[9]

27. The Special Rapporteur remains concerned that States have not analysed their own labour market needs across sectors and adjusted mobility allowances accordingly. Even in cases where trade arrangements allow for mobility across all sectors, immigration determinations in receiving countries are heavily influenced by economic pressures, political ties and traditional admission practices, completely disregarding the overwhelming evidence of the benefits of a well-regulated migration. During the Special Rapporteur's visit to the European Union institutions in Brussels, he noted the high demand for unskilled labour in several sectors, including agriculture, hospitality, construction and domestic work, which generally goes unrecognized, thus fostering important underground labour markets where irregular migrants are exploited. He observed that the European Union migration framework has yet to be accompanied by a parallel development of opportunities for migrants to seek regular channels for temporary "unskilled" jobs.

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[7] Marion Panizzon, "Standing together apart: bilateral migration agreements and the temporary movement of persons under 'Mode 4' of GATS", Working Paper No. 77 (Centre on Migration, Policy and Society, University of Oxford, 2010).

[8] States have demonstrated a preference for regulating medium- and low-wage migration in bilateral labour mobility agreements, which are different from trade agreements (see paras. 65-69 below).

[9] *World Economic and Social Survey 2004: International Migration* (United Nations publication, Sales No. E.04.II.C.3).

28. The Special Rapporteur also wishes to draw attention to States entering new agreements that undercut existing labour standards and mobility arrangements to the detriment of migrant labour. The negotiation of the Tripartite Free Trade Area among COMESA, the East African Community and the Southern African Development Community (SADC) illustrates some of the challenges associated with overlapping commitments between regional communities at various stages of integration. Of the 26 countries that belong to a regional economic community, 12 belong to at least 2 of the communities and a number of countries are negotiating to join different customs unions, implying that citizens of some States will enjoy greater mobility than others.

29. The practical effect of constrained mobility has been that States fail to acknowledge and regulate informal and underground labour markets. Consequently, migrants are victims of deceptive recruitment practices, work in unsafe working conditions, become more vulnerable to labour exploitation at the hands of unscrupulous employers and live in constant fear of being deported. Where adequate provisions are not made to facilitate mobility, migrants may respond to unrecognized labour needs by seeking out irregular channels and covert intermediaries, or by overstaying to gain employment, thus risking their lives and welfare.

Non-discrimination, equality of opportunity and treatment

30. International human rights law confers protections to all individuals within a State's jurisdiction, regardless of migratory status. Similarly, the ILO comprehensive tripartite system of labour protections provides coverage to all workers, regardless of legal status. Emerging jurisprudence at the regional level reinforces the principle that international human rights and labour standards and national labour laws apply to all migrant workers without distinction.

31. The Special Rapporteur remains concerned, however, that lack of data on and of acknowledgement of the contributions of migrants, both in fulfilling low-wage and medium-wage work, compounded with discriminatory attitudes and high rates of unemployment in destination countries, have resulted in the limited inclusion of mobility provisions in trade agreements for low-wage workers and a subordinated status for migrant labour. Migrants may face discrimination, both in the initial determinations that States make to enter into trade agreements and with respect to decisions about immigration. The Association of Southeast Asian Nations (ASEAN) Economic Community reduces barriers to migration, but only for high-wage occupations, which represent 1.5 per cent of the labour market.[10] Migrants in low-wage occupations continue to face discriminatory laws that exclude them from regular migration.

32. Even migrants with permanent status experience labour market disadvantages, discrimination, xenophobia and ill-treatment. Approximately 16 per cent of migrants employed in OECD countries are in low-wage jobs, compared to 7 per cent of nationals.[11] This is not owing to low educational levels or training, as corresponding data indicates that many migrant workers are overqualified.

33. Persistent discrimination against migrants manifests itself on a day-to-day basis in multiple ways: the irregular channels and covert agents that migrants must seek out to gain entry into destination countries; the retention of workers' passports or identity documents; and the exploitative work conditions that migrants endure. During the Special Rapporteur's

[10] Guntur Sugiyarto and Dovelyn Rannveig Agunias, "A 'freer' flow of skilled labour within ASEAN: aspirations, opportunities and challenges in 2015 and beyond", Issues in Brief, No. 11 (IOM Regional Office for Asia and the Pacific and the Migration Policy Institute, December 2011).

[11] ILO, *Fair Migration: Setting an ILO Agenda* (Geneva, International Labour Office, 2014).

visits, he has noted the discriminatory categorization of migrants based on their nationality, whereby some nationalities are seen as more valuable than others and are paid higher salaries for carrying out the same job (e.g., domestic work).

34. The Special Rapporteur is also aware of situations where discrimination against migrants can escalate to verbal intimidation, physical and sexual violence or death. The United Nations has found that 59 per cent of trafficked Cambodian migrants interviewed aboard Thai fishing vessels reported witnessing the murder of a co-worker.[12]

35. States have taken a greater number of measures to address systemic discrimination against migrants through the inclusion of non-discrimination clauses in their trade agreements, with monitoring and enforcement arrangements. The Dominican Republic-Central America-United States of America Free Trade Agreement (CAFTA-DR) provides for, inter alia, cooperation activities that increase protection against workplace-related discrimination and promote a culture of compliance with labour standards. The labour standards in States parties are monitored through a project carried out in conjunction with ILO.

Pervasive and multifaceted workplace exploitation

36. The Special Rapporteur has already addressed labour exploitation extensively in a previous report (A/HRC/26/35). Here, he emphasizes that provisions for robust, comprehensive and binding institutional frameworks are necessary within trade agreements to ensure compliance with labour standards and safeguard the rights of migrant workers.

37. Monitoring and enforcement mechanisms have been included in some trade agreements and make use of several mediums to detect and eradicate systemic abuse, including through the establishment and training of labour inspectorates, regular labour inspections and independent auditing on labour conditions at all stages of the value-addition and supply chains. In April 2013, in the context of CAFTA-DR, the Governments of Guatemala and the United States signed an "enforcement plan" containing 18 commitments aimed at addressing institutional weaknesses in the labour protection framework of Guatemala. These included strengthening the enforcement capacity of labour inspections, protecting workers against the sudden closure of firms, ensuring labour law compliance by export companies and enforcing decisions of the labour judiciary. Guatemala engaged an additional 100 labour inspectors, as well as other staff, in preparation for the agreement.[13]

38. Trade and mobility agreements have also introduced regulated recruitment systems to counter the specific issue of unethical recruitment and dismantle unscrupulous fee structures. In some cases, shared migration databases have been instituted between States to coordinate migration efforts and ensure that low-wage workers are engaged in employment that better matches their skills and qualifications. The Special Rapporteur received information about the Employment Permit System of the Republic of Korea, which has nearly eliminated recruitment fees for migrants but remains compromised by power imbalances where countries of origin may require deposits and encourage reporting among migrants to ensure that workers do not overstay their visas.[14]

[12] United Nations Inter-Agency Project on Human Trafficking, "Exploitation of Cambodian men at sea" (29 April 2009).

[13] International Institute for Labour Studies, *Social Dimensions of Free Trade Agreements*, (Geneva, ILO, 2015).

[14] Open Working Group on Labour Migration and Recruitment, "South Korea's Employment Permit System: a successful government-to-government model?", Policy Brief No. 2 (2014).

Freedom of expression and association and the right to unionize and bargain collectively

39. The rights of all migrant workers to join and form trade unions are well-established in international human rights and labour law, and ILO has worked tirelessly over decades through its tripartite structure to make this commitment a reality. The Special Rapporteur is concerned, however, that migrant workers are unable to freely exercise their right to join or form trade unions and bargain collectively. In many States, national legislation restricts unionization on the basis of citizenship or legal status, which exacerbates the exploitation of migrants. For example, labour laws in some States may require a minimum number of nationals to form a trade union, whereas other States may require that workers meet specific residency requirements in order to unionize. In both instances, migrants are prevented from exercising their fundamental rights.

40. Migrant workers have experienced obstacles to organizing because they are concentrated in jobs that nationals are unwilling to accept, in remote locations or in sectors that are not subject to regulation. During his visits, the Special Rapporteur noted the existence of sponsorship and *kafala* structures, wherein workers are under the absolute authority of their sponsors and those employed in individual homes are particularly isolated and subject to abuse. Migrants with irregular status may also be intimidated to join or form trade unions owing to threats of loss of employment, deportation or violence, or they may even face discrimination from nationals who view them as competition for jobs.

41. The Special Rapporteur emphasizes that the ability of migrants to unionize is critical to combat the structural power imbalances that permeate the current trade regime. Trade unions play an instrumental role in empowering migrants and ensuring fair terms and conditions of employment. In 2010, after 162 Thai berry pickers were not paid by their employer, Lomsjö Bär AB, three of the workers joined the trade union Kommunal, which pursued the company in court, and the workers eventually received compensation from the Government of Sweden.[15]

42. The Special Rapporteur stresses that development cannot be measured solely by economic gains but must also be evaluated against advancements in the social and cultural dialogue. Trade unions have been effective in facilitating the integration of migrants in countries of destination by fostering collective solidarity and establishing support networks. The European Trade Union Confederation established an online information resource and social network of trade union contact points for migrants across Europe (see www.unionmigrantnet.eu). In Canada, the United Food and Commercial Workers Union organized the Agricultural Worker Alliance, to establish 10 support centres across the country that aid migrant workers by: addressing abusive employers and hazardous workplace and housing conditions; assisting with medical treatment, workers compensation benefits and parental leave benefits; facilitating regularization processes; sponsoring courses on health and safety training and English as a second language; and providing scholarships to children of migrant workers.

43. Trade unions have been critical partners in the prevention of human trafficking and forced labour. The International Trade Union Confederation and the International Union of Food Workers, for example, have played a critical role in curtailing forced labour in the cocoa industry in Côte d'Ivoire by advocating implementation of the Protocol for the Growing and Processing of Cocoa Beans and Their Derivative Products in a Manner that Complies with ILO Convention No. 182 concerning the Prohibition and Immediate Action

[15] ILO Country Office for the Philippines, *A Case Study of Thai Migrant Workers in Sweden* (Manila, 2012).

for the Elimination of the Worst Forms of Child Labour.[16] A partnership between the confederation of workers Rerum Novarum, of Costa Rica, and the Sandinista Workers' Centre and the Confederación de Unificación Sindical, of Nicaragua, led to the creation of the Trade Union Centre for Migrants, which offers free legal and administrative assistance to all migrant workers seeking regularization and aims to combat trafficking in children by partnering with the local taxi drivers' union.[17]

44. Cooperation and coordination agreements between unions in countries of origin and destination too are effective in addressing protection gaps and galvanizing migrants across borders. In 2014, representatives of the Congress of South African Trade Unions, the Zimbabwe Domestic and Allied Workers Union, the South African Domestic Service and Allied Workers Union, the Federation of Unions of South Africa, the Congress of Lesotho Trade Unions and the Zimbabwe Congress of Trade Unions signed a declaration to support each other, strengthen the capacity of national unions to assist local and migrant domestic workers and lobby their respective Governments to continue to implement their decent-work country programmes.[18] The Special Rapporteur believes cooperation agreements can be used by States to develop institutional links with trade unions and ensure that unions are partners in trade negotiations.

45. Having recognized the important role of trade unions, States parties to trade agreements have begun to include provisions protecting the rights of migrants to unionize and bargain collectively. In some cases, this has improved domestic protections for organized labour. In 2006, as a result of pre-ratification pressure stemming from its trade agreement with the United States, Oman granted workers the right to unionize.[19]

46. The Special Rapporteur emphasizes, however, that this is not the case in all contexts, especially where domestic courts fail to uphold the rights of migrants to organize, as was the case in Canada in *Ontario (Attorney General) v. Fraser* (2011).

Impediments to access to justice, due process and the right to an effective remedy

47. International human rights law protects, inter alia, the right of an individual to an effective remedy from the competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of a State, and the possibilities of judicial remedy.

48. The Special Rapporteur is aware that some countries of origin have resisted providing support to migrants seeking effective remedy so as not to endanger their competitiveness in the international labour market or their ability to benefit from remittances. The British Columbia Labour Relations Board found that Mexican authorities had blacklisted migrant workers who had participated in the Canadian Seasonal Agricultural Workers Program for supporting unions and prevented workers from participating in the Program the following season because they feared that if Mexican workers unionized they would be replaced by workers from Guatemala.[20]

49. Where migrants do not receive support from their Government, the onus falls on migrants to notify authorities and file complaints of violations of their rights. Migrants may face several obstacles in accessing legal remedies, however, including: lack of knowledge

[16] International Trade Union Confederation, *How to Combat Forced Labour and Trafficking: Best Practices Manual for Trade Unions* (Brussels, 2009).

[17] Ibid.

[18] See www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=163.

[19] International Institute for Labour Studies, *Social Dimensions of Free Trade Agreements*.

[20] See www.labourlawoffice.com/wp-content/uploads/2015/08/BM5.pdf.

of the employment terms, since there is no written work contract; lack of knowledge of the terms of the trade or mobility agreement and, where there are competing agreements, the applicable framework; lack of knowledge of national labour and migration laws or the local language; lack of access to competent representation or legal aid; obstacles to unionization; and fear of retaliation from employers or deportation. In the Guiding Principles on Business and Human Rights, it is acknowledged that migrants often do not enjoy the same level of legal protection of their human rights as the wider population and that this prevents valid cases involving business-related human rights abuses from being adjudicated.

50. Most trade agreements aim for settlement between the parties outside of judicial review. Examples of such agreements have been concluded with, among others: ASEAN, the European Free Trade Association, the Southern Common Market (MERCOSUR), NAFTA, the Southern African Customs Union and SADC. Similar trade agreements have also been concluded between Japan and Switzerland and between Tunisia and Turkey, among others. It is worth noting, however, that some trade agreements can be invoked before domestic courts, for example in Argentina, Brazil and Mexico.

51. Given the endemic power imbalances in the trade regime, it is not surprising that Governments have rarely brought forward labour cases in the context of trade and may even challenge them. The majority of cases end up stalled in administrative channels created under the trade terms. Very rarely, other outreach solutions have been identified to remedy violations of migrants' rights. NAFTA has an advanced dispute settlement mechanism, but the remedies available are illusory and beg the question of enforceability, since the North American Agreement on Labour Cooperation (NAALC), an accord parallel to NAFTA, only provides for binding remedies where an arbitral panel finds a violation relating to child labour, occupational health and safety, or minimum wages. Penalties are not imposed for labour standards violations and complaints rarely advance beyond the national administrative offices established to monitor NAFTA. In the so-called "Washington State apples case" (1998), when Mexican workers filed a complaint under NAALC alleging violations of their rights to unionize and bargain collectively, to protection from discrimination and to health and safety, and alleging that employers used threats and intimidation, the Washington State authorities established a complaints hotline in Spanish, produced Spanish-language information materials and recruited additional Spanish-speaking staff in the agriculture sector.

52. The Special Rapporteur emphasizes that strengthening access to justice for migrants to pursue judicial remedies directly is essential to combat asymmetry in the trade regime (see sect. V below).

Economic, social and cultural rights and integration

53. Under international law, States have a binding obligation to ensure the economic, social and cultural rights of all individuals without distinction, including the right to work, which provides migrants with compensation that is equal to that provided to nationals, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure and a reasonable limitation on working hours and periodic holidays with pay, as well as remuneration for public holidays. States also have the responsibility to respect and uphold the rights to, inter alia, education, health, social security, housing, food and water, a healthy environment and culture in a manner that promotes non-discrimination, dignity and freedom for migrants.

54. The Special Rapporteur is concerned that the respect, protection and fulfilment of economic, social and cultural rights remain too often elusive for migrants, especially low-wage workers or those in an irregular situation. States have not consistently established policies with corresponding accountability mechanisms that ensure the full range of economic, social and cultural rights for migrants, regardless of legal status. The Special

Rapporteur is aware that many migrants are not able to access housing and, as a result, live in overcrowded or substandard housing. Migrants rarely have access to medical care and the necessary social services and benefits systems in transit or destination countries. Migrant children may be denied the right to attend school owing to their or their families' irregular status. In some cases, trade effects may result in environmental degradation or supply-chain offences such as trafficking, forced labour or child labour, which compel migrants to leave their country of origin.

55. Trade agreements can be effective in developing robust systems for the monitoring and enforcement of economic, social and cultural rights in a way that reduces the economic and social costs associated with migration and facilitates the integration of migrants into the destination country. Where necessary, firewalls can also be created between immigration enforcement and public services so that public officials are able to perform their important social functions without interference. The Caribbean Community established the Council for Human and Social Development, composed of ministers of the member States, who convene to discuss labour and other social issues.

56. Trade agreements have also enhanced the portability of social security and other acquired rights, promoted the mutual recognition of diplomas, qualifications and skills, supported the education and training of migrants, and lowered the transfer costs of remittances. MERCOSUR guarantees migrants equal civil, social, cultural and economic rights and freedoms as nationals in the destination country, particularly the right to work and to carry out any legal activity. The Ibero-American Multilateral Agreement on Social Security, to which two European and 12 Latin American countries are signatories, covers all persons who have been subject to the social security legislation of any of the signatory States and their family members, and provides for cash benefits in the event of disability, old age, death of a family member and employment-related injury.

Humaa rights concerns of vulnerable population groups

57. The Special Rapporteur recommends that special attention be paid to the potential impact of trade on migrants who may be further marginalized by other intersecting mutable or immutable characteristics, for instance gender, age, race, minority or indigenous status, disability, medical condition or sexual orientation. While these traits are not inherent vulnerabilities on their own, migrants in these groups may be more at risk of exploitation and abuse because of their irregular status and precarious labour contracts.

Gender

58. The Special Rapporteur stresses that the services sector constitutes the largest employer for women worldwide and believes that well-facilitated and regulated migration can offer women unprecedented opportunities for financial independence and upward mobility. It is promising that regional agreements such as COMESA have prompted the elimination of discriminatory national legislation against women.

59. Women, particularly those in the care sector, are especially vulnerable to exploitation and abuse, as they work in physical and social isolation. Men too may experience abuse and exploitation, in sectors such as construction and agriculture. The Special Rapporteur believes in the importance of trade agreements providing all migrants with the opportunity to seek redress for human rights and labour standards violations, without fear of detection, detention and deportation.

Children

60. Migrant children have unique concerns in the context of trade, as they comprise a significant proportion of child labourers in informal sectors, as well as in the commercial

sex industry. In 2010, in the context of the trade agreement between Panama and the United States, the National Bureau against Child Labour and for the Protection of Adolescent Workers was established within the Panamanian labour department. The partnership agreement between the members of the African, Caribbean and Pacific States and the European Union, also known as the Cotonou Agreement, provided for the creation of cooperative education programmes towards the elimination of child labour.

61. For children whose parents are migrant workers, being excluded from education and health systems in the destination country can have lasting consequences on physical and mental health and development. In its 2004 publication "Free trade and children", the United Nations Children's Fund (UNICEF) sheds light on the situation of migrant children, in the context of CAFTA-DR, who are disproportionately at risk of poverty, family disintegration and malnutrition because of declines in the agricultural sector and rural employment.

B. Structural impact on the rights of migrants

Protectionism, power imbalances, asymmetry and persistent inequalities

62. The Special Rapporteur reiterates that the manner in which international trade regulations and negotiations have been dominated by high-income countries has had tremendous consequences for the most vulnerable segments of the population, specifically migrants. Throughout the development of the multilateral trade regime, the protectionist approach to specific sectors has prevented developing economies from reaping the benefits of free trade where they have a comparative advantage in medium-to-low-wage labour. As migrants have continued to move towards high-productivity regions, the economic and political clout of developed countries has seriously undermined negotiations, monitoring and accountability in trade and mobility arrangements. Within WTO, high-income countries have filed the most complaints, largely owing to their superior financial and legal resources.[21] Empirical studies also indicate that, when developing countries sue high-income countries, they tend to experience longer delays between the end of litigation and the beginning of compliance proceedings. In 2009, in recognition of inherent asymmetry in the global economy, heads of the Group of 20 pledged not to repeat the same protectionist mistakes in trade, but the International Monetary Fund reports that during the financial crisis 17 of the 20 countries imposed trade restrictions, distorting aggregate world trade by at least 0.25 per cent ($50 billion per year). As a result of institutionalized inequities, migrants' concerns become even more attenuated in the context of trade, even though trade decisions have a direct impact upon migrants' rights.

63. There must also be greater balance between the protections afforded States and investors and all other persons in the jurisdiction of trade parties. Rule of law and judicial oversight are compromised when investors can bypass the exhaustion of national remedies before seeking relief in supra-national tribunals, for example in investor-State dispute settlement tribunals. While investor-State dispute settlement provisions are included in trade and investment agreements throughout the world, 60 per cent of all cases in 2014 were brought against developing countries and countries with economies in transition.[22] Although more cases are progressively being filed against developed countries, investors in capital-exporting countries have filed more than 80 per cent of all investor-State dispute

[21] Martin A. Weiss and others, "International investment agreements (IIAs): frequently asked questions", Congressional Research Service (15 May 2015).

[22] Ibid.

settlement claims.[23] There is no ceiling on the tribunal's compensation awards, and decisions are binding without appeal. As a result, the investor-State dispute settlement process has also had an undeniably chilling effect on the enforcement of rights, as States are less likely to rule in favour of the public if they are required to pay exorbitant fees as settlements. Remedies have also been disproportionately skewed in favour of high-income countries (see A/70/301).

Violation of the right to information, lack of transparency and meaningful participation in public affairs

64. The recent negotiation of the Trans-Pacific Partnership, the Trans-Atlantic Trade and Investment Partnership and the Trade in Services Agreement, which comprise at least two thirds of global trade in services, highlight the lack of transparency, opportunities for public dialogue and accountability surrounding trade negotiations. Like other mandate holders, the Special Rapporteur remains concerned about the extent to which transnational corporate interests have prevailed over public discourse and accountability for observing human rights standards. Although trade regimes have a significant impact on the lives of migrants, they rarely offer migrants or their representatives opportunities for meaningful participation in negotiation processes, which violates migrants' fundamental rights to self-determination, access to information and public participation. The Special Rapporteur is not aware of migrants' groups being consulted in these negotiations; more broadly, civil society does not participate in trade negotiations sufficiently. Despite power imbalances in the international trade regime, States repeatedly fail to reform trade negotiations to make them more transparent or strengthen accountability through enforcement against related rights violations.

65. The Special Rapporteur is pleased that the Canada-Colombia Free Trade Agreement includes binding provisions allowing any person residing in either country to submit a written inquiry to the national authorities and obliging the Governments to make the questions and responses public. He stresses, however, that it is important that the terms of such provisions be clear and actually provide meaningful opportunities for participation.

Merits of bilateral labour mobility regulation

66. Since the 1960s, the emergence of bilateral labour mobility agreements to govern medium- and low-wage migration has been a positive development, as States have greater flexibility to facilitate mobility across skills levels, address social protection gaps and respond to labour market needs than in the multilateral trade framework. ILO estimates that, in 2015, at least 358 bilateral labour mobility agreements were in existence.[24]

67. A recent shift towards incorporating mobility in framework agreements, memorandums of understanding and declarations of mutual cooperation has resulted in States treating labour mobility agreements as informal and non-binding. In Asia, almost 70 per cent of labour mobility arrangements employ the informal framework provided by memorandums of understanding, compared with 30-40 per cent in Africa, Europe and the Americas.[25]

68. The Special Rapporteur is concerned that bilateral labour mobility agreements erode existing social and mobility protections granted through commitments in other agreements, which increases the precariousness of workers by exposing them to the vulnerabilities of

[23] Ibid.

[24] International Labour Office, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (Geneva, 2015).

[25] Ibid.

displacement. He also notes that bilateral labour mobility agreements have not always been comprehensive in the protections they afford migrants and systematically fail to cover the entire migration cycle, to address gender-specific concerns, to provide for consultation with stakeholders outside of government, to integrate wage protection measures and to prohibit the confiscation of travel and identity documents.

69. The Special Rapporteur stresses that, even with the emergence of bilateral labour mobility agreements intended to improve social protections and curb illicit activity, the systemic abuse of migrants has continued, accompanying irregular migration, migrant smuggling, forced labour, child labour and human trafficking.

70. The Special Rapporteur proposes a global mobility framework in bilateral and multilateral trade agreements that would strengthen protections for migrants. Such a framework would build upon the protections specified in the ILO Multilateral Framework on Labour Migration (2006) and the ILO Migration for Employment Recommendation (Revised), 1949 (No. 86), to which a model agreement on temporary and permanent employment is annexed and includes provisions relating to recruitment, equality of treatment, education and vocational training, housing and employment contracts, among other provisions.

V. Promoting the human rights of migrants

A. Improving State accountability, effective monitoring and oversight

71. In keeping with the principles advocated by the Working Group on Business and Human Rights and other mandate holders, States must ensure that the trade agreements they conclude reflect their obligations under international law. According to the Guiding Principles on Business and Human Rights, this means that States must not breach international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. States also have a duty to refrain from ratifying agreements that make it more difficult to uphold fully human and labour rights.

72. The Special Rapporteur wishes to provide States with guidance on how to ensure that the trade agreements they conclude are consistent with their obligations towards migrants under international law. The Special Rapporteur understands that there is no blanket solution that will remedy all of the challenges related to trade and migration, but he believes that the systematic inclusion of a series of processes and provisions during trade negotiations would establish a strong institutional framework for the protection of migrants' rights. Such a system would include explicit references to international human rights and labour instruments in trade provisions, the dissemination of information about the draft terms of trade agreements and opportunities for public discourse about trade implications and the collection of reliable data that is made public to better inform trade policies and migration patterns.

73. The Special Rapporteur underscores the need to conduct human rights impact assessments reflective of the relevant national contexts and capacities (human, financial, political and technical) to determine appropriate provisions relating to general exception clauses, judicial remedies and other compensatory, adjustment, grievance and remedial mechanisms. These arrangements must be accompanied by monitoring and enforcement mechanisms that are developed in consultation with migrants and are continuously monitored to ensure their effectiveness. A national agency designated with independently monitoring all of the relevant ministries involved in migration matters may facilitate a comprehensive understanding of the labour migration experience of migrant workers. The

awareness of labour inspectorates, national human rights institutions and ombudspersons regarding the concerns of migrants should also be raised and such entities should be tasked with ensuring that the human rights of migrant workers are being observed in the implementation of trade agreements.

Ex ante and ex post human rights impact assessments

74. Human rights impact assessments are particularly useful when considering the human rights of migrants since they emphasize non-discrimination as a key guiding principle and shift the focus away from the aggregate outputs of trade to the impact of trade on the most vulnerable groups. In addition, human rights impact assessments strengthen accountability and empower rights holders. They may include subregional and national assessments, specific case studies and regional surveys, all of which can be critical in assessing the direct and systemic impact of trade on the rights of migrants.

75. The value of conducting ex ante human rights impact assessments during trade negotiations is essential for identifying and mitigating risks, as demonstrated by the assessment of the Continental Free Trade Area agreement currently being carried out with the support of OHCHR. An analysis of the assessment stresses the distributional gains for different segments of the population while emphasizing the importance of recognizing migrants' skills and qualifications and the need to continue to develop workers' skills through training and education.

76. The European Union systematically conducts sustainability impact assessments (economic, social and environmental impact assessments) of all major multilateral and bilateral trade negotiations. The assessments offer projections for migration flows and specific considerations, depending on the trade partner, relating to skills, sector, visa provisions, wages, labour conditions and vulnerable social groups.

Strengthening the evidence base for policymaking

77. The Special Rapporteur reiterates the importance of collecting reliable data on all aspects of the migrant labour market, including irregular migratory channels, recruitment practices and the informal sector, and data disaggregated by skills, age, gender, race and national origin, among other characteristics. Having such data would allow States to learn about and respond to their actual labour market needs. The inclusion of migration in the 2030 Agenda for Sustainable Development provides a framework for data collection, as States have already collectively agreed that migration is a priority that needs to be continuously monitored. Under target 17.18 of the Sustainable Development Goals, States have agreed to enhance capacity-building support to developing countries by the year 2020 to increase the availability of high-quality, timely and reliable data disaggregated by, inter alia, migratory status.

78. It is equally important that information about the operation of migration programmes be made publicly available so that migrant workers can confirm the legitimacy of recruiters and employers. Increased transparency would also ensure public accountability for the operation of labour migration programmes and make it easier for government agencies and advocates working to protect migrants' rights to gain access to information.

Enforceable human rights provisions

79. The Special Rapporteur points out that several trade agreements also include provisions for termination for material breaches of trade terms in keeping with the Vienna Convention on the Law of Treaties. Where parties to a trade agreement have required the inclusion of human rights provisions in the agreement, as the European Union has done, they must specify that the human rights clause is an essential element of the trade

agreement. Doing so will ensure that they have grounds to terminate the trade agreement where migrants' rights have been violated.

General exception clauses

80. General exception clauses have served as an effective means of advancing good-faith measures by States to pursue public welfare objectives. In the context of the General Agreement on Tariffs and Trade and WTO, States have already acknowledged that, without the introduction of appropriate safeguards and implementing national legislation, trade rules and policies can have an adverse impact on workers' rights. They have used exception clauses to address forced and child labour and introduce other protections by requiring the adoption of labour standards.

81. The Special Rapporteur believes it is promising that the proponents of general exception clauses have been geographically and economically diverse. Several countries from Asia and the Pacific and South America have included general exception clauses in trade agreements. General exception clauses also appear in the treaty programmes of Canada, Mauritius and Turkey, as well as in multilateral agreements such as the Investment Agreement for COMESA.

Access to judicial remedies

82. The Special Rapporteur stresses the need for migrants to be able to seek remedies directly in public courts and tribunals: the independence of the judiciary and the type of public oversight that are guaranteed by the international human rights framework are essential to the preservation of fundamental rights. As has been discussed, the complex, opaque and multilayered nature of the current trade regime obscures migrants' knowledge of their rights, legal recourses and available remedies. Under the current dispute settlement mechanisms included in trade agreements, migrant workers submit to a separate, privatized standard in order to seek relief for trade infractions and are required to go through traditional, costly and more onerous administrative channels to obtain remedies. Migrants also become reliant upon States to pursue their claims where States may have separate, distinct and, at times, competing interests. Ensuring the availability of outlets to pursue remedies in public courts would increase State accountability and also inform public discourse about labour migration programmes and the treatment of migrant workers. It is also by removing barriers to justice that migrants will be empowered to independently pursue their own fundamental human rights.

Balanced accountability and representation in international organizations

83. The Special Rapporteur stresses the importance of States holding each other accountable for the manner in which their citizens are being treated while abroad. Beyond dispute settlement mechanisms and judicial remedies, States should consider utilizing all of the international human rights and ILO mechanisms to address concerns about the treatment of migrant workers, who would be better protected if trade agreements made explicit reference to international human rights and labour instruments.

84. Greater attention should also be paid to ensuring that international mechanisms in the areas of trade and migration do not disproportionately penalize developing countries and that they are accountable and representative of all stakeholders. The Special Rapporteur believes there is a need to create stronger institutional links between trade and labour rights in the international framework.

Importance of civil society

85. Trade unions, non-governmental organizations and other civil society actors have served an important function in raising awareness of the rights of migrants and reporting to international human rights mechanisms. For example, the Centre for the Rights of Migrants in Mexico conducts qualitative investigations of migrants' experiences, reports abusive recruitment practices, advocates legislative reform, engages in impact litigation, files complaints under NAFTA and conducts trainings at the Inter-American Commission on Human Rights.

B. Enhanced migration partnerships and cooperation, including with the private sector

86. States retain the primary responsibility for addressing the human rights impact of trade liberalization. However, trade agreements have served as a vehicle for private actors, including the business community, to understand human rights and offer critical insight into effective policies for the management of migrant labour. Private actors have also helped remedy some of the governance gaps related to mobility and trade policies in order to mitigate liability, develop new markets and advance social responsibility. The United States-Cambodia Bilateral Textile Agreement initiated a multi-stakeholder policy reform process whereby the United States offered Cambodia better access to the garment market in return for improving working conditions in its factories.

87. The Special Rapporteur is aware of several multi-stakeholder action plans that engage States, the private sector and trade unions in the articulation and promotion of ethical labour standards for migrant workers. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers aims to strengthen the protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN countries. The Institute for Human Rights and Business organized a series of multi-stakeholder round tables during the period 2009-2012 with Governments, multinational corporations, trade unions and other members of civil society to produce the Dhaka Principles for Migration with Dignity (2011), which promote the responsible and ethical recruitment of migrant workers. Business for Social Responsibility led a pilot project in Malaysia with the non-governmental organization Tenaganita that resulted in the production of a management toolkit for migrant workers.

88. States have also collaborated to lower the human, social and economic costs of migration and expand opportunities for migrants to invest their earnings more productively. The Maya Declaration of the Alliance for Financial Inclusion unites over 57 financial service providers in emerging and developing economies to promote financial inclusion by, for example, lowering the costs of remittances and promoting digital financial services.

89. Multi-stakeholder partnerships have also engaged migrants and diaspora organizations in developing their communities of origin and destination. The Patrimonio Hoy programme of Cemex, a company operating in the building materials industry, provides migrant families with financing, construction materials and technical assistance so they can erect or expand their homes. In the United States, workers participating in the Fair Food Program play a leading role in monitoring and protecting their rights. Some retail brands have made a binding commitment to support the enforcement of human rights by leveraging their purchasing power.

VI. Conclusions and recommendations

A. Conclusions

90. **The development of international trade is in the interest of all, but respect for the human rights of all individuals, regardless of their status, must be the fundamental principle that guides economic growth and advancements in social welfare.**

91. **The Special Rapporteur realizes that there is no one-size-fits-all solution to today's global challenges but he hopes that shedding light on this important area and offering recommendations will serve as point of departure for further exploring the issues and identifying practical solutions. It is only if we take active measures to merge human rights and trade considerations that we will mitigate the inherent power imbalances in the global economy and the asymmetrical emphasis on economic efficiency and short-term gains to the detriment of migrant labour. Facilitated and well-regulated mobility that is supported by comprehensive and robust institutional frameworks is necessary to ensure inclusion and equity in the enjoyment of the benefits of trade.**

B. Recommendations

92. **To address the direct impact of international trade on the human right of migrants, the Special Rapporteur recommends that:**

(a) **States ratify the core international human rights treaties, particularly those that recognize the rights of migrant workers, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO fundamental conventions, the ILO migrant workers conventions (the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)), other ILO conventions (particularly, the Labour Inspection Convention, 1947 (No. 81), the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86), and the Domestic Workers Convention, 2011 (No. 189)), all other conventions that may offer protections for migrant workers, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and the Convention relating to the Status of Refugees;**

(b) **States immediately begin to include explicit references to international human rights and labour instruments in all new and renegotiated trade agreements;**

(c) **States ensure that trade and mobility agreements do not erode existing social and mobility protections granted through commitments in other agreements;**

(d) **States and international organizations develop a global mobility framework, in consultation with trade unions and civil society, and include the framework in trade agreements with a view to protecting the rights of migrants;**

(e) **States strengthen monitoring and enforcement of labour standards in all stages of the migratory process, from pre-departure and recruitment in the country of origin to employment in the destination country; extend oversight to traditionally unregulated and informal sectors and include labour inspections and auditing in value-addition and supply chains; end impunity for abusive immigration officials, recruitment agents, employers and others for violating migrants' rights, including**

through the use of sanctions and monetary fines; and adopt legislation, allocating appropriate resources and pursuing ministerial consultations if a trade party has not complied with trade terms;

(f) States adopt an all-of-government approach to migration and ensure that national human rights institutions and ombudspersons are trained and mandated to report on violations of migrants' rights;

(g) States protect the rights of migrant workers to unionize and engage with trade unions and migrants' associations in the development of institutional frameworks relating to trade;

(h) States ensure that trade agreements include measures to reduce the social and economic costs associated with migration such as: establishing firewalls between immigration enforcement authorities and agencies that provide public services; ensuring the right to work; overseeing recruitment processes; ensuring the portability of social security and other benefits; reducing the costs of remittances; removing obstacles to issuance of visas; and ensuring the recognition of professional qualifications, among other measures;

(i) States ensure that trade agreements include provisions for migrants to directly access public courts and tribunals, including by ensuring the availability of translation and legal resources for migrants to file individual or collective complaints where their rights have been violated as a result of a trade agreement; and monitor access to labour-related administrative services, tribunals and courts to ensure that migrants do not face obstacles in accessing effective relief for violations of their rights;

(j) States and international organizations consider a cooperation framework agreement between WTO and ILO to strengthen institutional links between labour rights and trade, including through the allocation of funding (such a mechanism may provide for the development of guidelines, sharing of good practices and a dispute settlement mechanism);

(k) States, civil society, migrants' associations and trade unions invest in the targeted collection of data to increase understanding of the impact of trade agreements on the human and labour rights of migrants and ensure the information is publicly available; and conduct studies that include data disaggregated by gender, age, race and national origin, among other categories, on recruitment and the irregular, informal and low-skill sectors;

(l) States collaborate towards the development of multi-stakeholder action plans that engage employers, trade unions, migrants' associations and other members of civil society in the promotion of decent work and share best practices;

(m) States explore other programmes to engage the private sector and include in trade terms a commitment to, among other things migrant outreach, legal expertise to strengthen labour laws, assistance to trade unions, training courses for labour inspectors and pre-departure recruitment and orientation services, and, in order to ensure the sustainability of these initiatives, include in trade agreements provisions for the financial and other resources necessary to administer them.

93. **To address the structural impact of international trade on the human rights of migrants, the Special Rapporteur recommends that States:**

(a) When negotiating trade agreements, seek technical support from United Nations organizations and specialized agencies, notably OHCHR, ILO, WTO and UNCTAD, to help ensure that the relevant provisions in such agreements respect, promote and fulfil international human rights standards;

(b) Explore, jointly with migrants, migrants' associations and trade unions, opportunities to increase the level of public involvement in the negotiation and drafting of trade agreements, which would include disseminating information during trade negotiations and introducing a range of participatory mechanisms that would enable migrants to submit queries, comment on or take part in the negotiation and drafting of all relevant investment and trade agreements;

(c) When entering into trade agreements, undertake comprehensive ex ante and ex post human rights impact assessments that consider the rights of migrants through direct consultations with migrants, migrants' associations and trade unions, and, on the basis of these assessments, include relevant general exception clauses and other compensatory, adjustment, grievance and remedial mechanisms — which may include minimum wage provisions, welfare funds to support migrant workers, strengthened consular support, voluntary insurance schemes for migrants and other housing or transitional assistance — and termination clauses, among other measures;

(d) Ensure that gender-specific considerations are adequately integrated into the development of such human rights impact assessments so that the impact of trade agreements on the human rights of migrant women and men are identified and effectively mitigated;

(e) Ensure that child-specific considerations are adequately integrated into the development of such human rights impact assessments so that the impact of trade agreements on the human rights of migrant children are identified and effectively mitigated;

(f) Involve representatives of migrants in the negotiating process for all bilateral and multilateral trade agreements, including representatives of vulnerable groups, when human rights impact assessments have identified potential issues relating to migrants;

(g) Include provisions for labour mobility in multilateral and regional trade agreements, rather than in informal bilateral labour mobility commitments, with full and explicit respect for migrants' rights;

(h) Ensure that dispute settlement mechanisms included in all new and renegotiated trade agreements do not contravene States' abilities to protect migrants' rights;

(i) Require annual reporting on the impact of their trade and investment agreements on human rights in each country and make the information publicly available.

94. The Special Rapporteur recommends that the United Nations and related organizations:

(a) Ensure that human rights considerations related to trade and investment agreements are included in State reports to the international human rights mechanisms;

(b) Continue to provide States, the private sector, trade unions and other civil society actors with information, guidance and best practices aimed at protecting the rights of migrants in the context of trade;

(c) Continue to provide States with technical and capacity-building assistance in conducting human rights impact assessments and in adequately supporting the work of national human rights institutions and ombudspersons;

(d) Ensure ongoing collaboration and mainstreaming of human rights and labour standards, including all those relating to migrants, among all United Nations and related agencies that work on issues relating to investment and bilateral and multilateral trade agreements, including OHCHR, ILO, WTO and UNCTAD;

(e) Strengthen the evidence base for policymaking in trade as it pertains to the rights of migrants through targeted consultation and research, including through the collection of data disaggregated by gender, age, national origin and race, among other categories, on recruitment and on informal and irregular channels.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the thematic report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, prepared pursuant to Council resolution 26/8. In her report the Special Rapporteur addresses the linkage between trafficking in persons and conflict, which she had identified in her previous report to the Council (A/HRC/29/38) as one of the areas of interest to and further research by her mandate. In the present report the Special Rapporteur raises international awareness on the forms and nature of trafficking related to the complex situation of conflict.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

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I. Introduction

1. In the present report, submitted pursuant to Human Rights Council resolution 26/8, the Special Rapporteur outlines her activities undertaken during the period under review and presents a thematic report on the subject of trafficking in persons in conflict and post-conflict situations: protecting victims of trafficking and people at risk of trafficking, especially women and children.

II. Activities carried out by the Special Rapporteur

A. Participation in conferences and consultations

2. On 11 April 2016, the Special Rapporteur took part in the sixteenth conference of the Alliance against Trafficking in Persons organized by the Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings of the Organization for Security and Cooperation in Europe, held in Vienna.

3. On 29 and 30 November 2015, the Special Rapporteur convened, in Amman, an expert group meeting on the impact of armed conflict on people's vulnerability to trafficking in persons, including sexual and labour exploitation.

4. On 16 November, she delivered opening remarks at the sixth session of the Working Group on Trafficking in Persons, established by the States parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, held in Vienna.

5. On 23 October, she presented her thematic report on due diligence and trafficking in persons (A/70/260) to the General Assembly at its seventieth session.

6. On 24 June, she took part in an event on the margins of the twenty-ninth session of the Human Rights Council in connection with a global call for action to prevent and respond to abuse and fraud in the recruitment of labour, including its relationship to trafficking in persons, organized by the United Nations Office on Drugs and Crime (UNODC) and the International Labour Organization (ILO).

B. Country visits

7. The Special Rapporteur visited Jordan from 28 January to 4 February 2016, at the invitation of the Government. The report on the visit is contained in the addendum to the present report. She thanks the Government for its cooperation prior to and during the visit. She also wishes to thank the Governments of Cuba, Kuwait, Luxembourg, Madagascar, Nigeria, Switzerland and the United States of America for inviting her to visit their countries. She will visit Kuwait from 6 to 14 September 2016 and hopes to be able to honour the remaining invitations in 2016 and 2017 in the expectation that mutually convenient dates can be agreed promptly.

III. Trafficking in persons in conflict and post-conflict situations: protecting victims of trafficking and people at risk of trafficking, especially women and children

A. Introduction

8. In her previous report to the Human Rights Council (A/HRC/29/38), the Special Rapporteur identified the linkage between human trafficking and conflict of interest to her mandate.

9. In the present report she intends to provide information on various ways in which trafficking in persons and conflict interact and intersect. She will first focus on the context and will aim to identify the problem by looking at cases that illustrate different trafficking trends. She will map the legal and policy framework with a view to identifying weaknesses and opportunities. Lastly, she offers recommendations to address trafficking in persons in conflict and post-conflict situations in collaboration with States, civil society and the international community.

B. Context and identification of the problem

10. Trafficking in persons violates human rights and continues to pose a serious challenge to humanity, including in conflict situations.

11. Conflict severely affects individuals, families, communities and nations on a global scale. In 2014, 41 active conflicts were identified, with the most acute in Africa, the Middle East and Asia.[1] In the same year, conflict and persecution forced a daily average of 42,500 individuals to leave their homes and seek protection, either within their own country or in other countries.[2] The number of persons displaced because of conflict and persecution in 2014 stood at an unprecedented 59.5 million, a 40 per cent increase in just three years.[3]

12. The features and patterns of modern-day conflict are linked to trafficking in persons, especially women and children. While there have been several large-scale conflicts between States in the past decade, the trend towards internal conflict continues to grow. Indeed, several international armed conflicts in recent times have morphed into complex internal conflicts and often spilled over to fuel internal crises in neighbouring States.

13. Conflict is accompanied by a breakdown in public institutions, violation of human rights, erosion of essential services, heightened tensions within and between communities that previously coexisted in relative peace, inequalities and impoverishment. Conflicts and the resulting increase in displacement affect an already strained international asylum/refugee system. Lack of access to safe and legal migration options forces many persons fleeing conflict to use the services of illegal facilitators, increasing their exposure to exploitation, including trafficking.

14. Human trafficking is an increasingly common feature of modern conflict, whether non-international or international. Existing vulnerabilities to trafficking, from gender-based violence to discrimination to lack of economic opportunity, are exacerbated before, during

[1] International Institute for Strategic Studies, Armed Conflict Database, available from https://acd.iiss.org/en/conflicts?tags=D6943ABDB5364229B5A0E3338AC94EA1.

[2] Office of the United Nations High Commissioner for Refugees (UNHCR), *World at War – Global Trends: Forced Displacement in 2014* (Geneva, 2015).

[3] Ibid.

and after conflict. Furthermore, conflict tends to fuel impunity, the breakdown of law and order and the destruction of institutions and communities, which foster the conditions within which trafficking will flourish, often past the point at which hostilities cease.

15. In order to provide a description and to establish the nature and scope of the problem, the Special Rapporteur will consider trafficking in conflict from three perspectives: trafficking of persons fleeing conflict; trafficking during conflict; and trafficking in post-conflict situations.[4] In practice, overlapping between these aspects is common. However, it is possible to identify particular features or issues of trafficking associated with each to understand how different situations and vulnerabilities arise and how they can be addressed. Because of a dearth of information, the Special Rapporteur addresses the most common forms of trafficking in conflict and post-conflict situations.

C. Trafficking of persons fleeing conflict

16. Individuals fleeing anticipated or actual conflict, or the aftermath of conflict, are vulnerable to trafficking. The pressure to move is often urgent and intense, leading people to take risks that would be unacceptable under normal circumstances. Conflict weakens State structures, removes protections and enables criminal networks to operate more freely, including across borders. Sometimes trafficking will occur within the conflict zone or in another part of the affected country to which the victims have been displaced. Increasingly, persons who have escaped conflict in another country as part of a larger, mixed migration process become victims of trafficking at some point in their journey or at their intended destination.

Trafficking of persons internally displaced by conflict

17. Internal displacement due to conflict and persecution affects almost 40 million people.[5] Most of the world's internally displaced persons live outside camps, in urban areas and with host communities, and remain invisible because they have not registered as internally displaced persons or wish to remain anonymous. These persons face greater risk of trafficking and exploitation.

18. Forced displacement can increase the risk of trafficking by weakening or destroying family support structures, community bonds and self-protection mechanisms that might otherwise serve as a buffer against human trafficking. Because internally displaced persons often lack documentation and have limited access to education, resources and self-reliance opportunities, they may be particularly vulnerable to traffickers who appear to offer life-saving access to employment and other opportunities. Internally displaced persons who fear for their lives and wish to seek protection abroad can also fall prey to traffickers who claim to offer a route to safety. Traffickers specifically target impoverished communities, including the internally displaced, in order to exploit their vulnerability. Poor and displaced families may entrust the care of their children to traffickers who promise to provide them with education or skills training, but ultimately exploit them for the purposes of prostitution, forced labour or irregular adoption.[6] Internally displaced women and girls are

[4] The division of conflict into these three stages has been used for the purposes of the present report, taking into consideration that in practice, not all conflicts can be so clearly divided and that overlapping may occur.

[5] UNHCR, *World at War*.

[6] UNHCR, Handbook for the Protection of Internally Displaced Persons, Action Sheet No.7, "Human trafficking" (n.d.).

often disproportionately affected by the loss of livelihoods during displacement (see A/HRC/23/44, para. 46).

19. Conflict-related violence, such as sexual violence, can itself be a driver of forced internal displacement, which in turn increases vulnerability to further exploitation, including through trafficking. For instance, sexual violence by armed groups has forced ethnic minority women and girls in remote rural areas away from their communities and placed them at greater risk of trafficking within the country as well as overseas.[7] Additionally, worsening security situations and overcrowded camps with inadequate basic services cause some internally displaced persons to risk crossing borders in an irregular manner in search of employment, putting themselves at high risk of exploitation because of their lack of legal status.[8] Military attacks on camps further worsens displacement and causes undocumented internally displaced persons, including women and unaccompanied children, to flee their camps, exposing them to the risk of being exploited or trafficked.[9]

Trafficking of refugees and asylum seekers fleeing conflict

20. For the millions of people who are forced to flee their country because of armed conflict, the journey of escape has become increasingly expensive and hazardous, with a tangible risk of trafficking-related exploitation. Sometimes these dangers relate to the available paths of escape. Throughout their journey and at their destination, migrants, including refugees and asylum seekers, are highly vulnerable to physical violence, sexual assault, extortion and trafficking, as well as detention by national authorities.[10] The journey of female migrants and unaccompanied children travelling through the Horn of Africa is particularly hazardous. Thousands have disappeared, presumably abducted for purposes of exploitation.[11]

21. Refugees and asylum seekers are vulnerable to trafficking. Refugees fleeing the conflict in the Syrian Arab Republic through Lebanon and Turkey often become subject to trafficking-related exploitation, including child labour, forced prostitution, forced and early marriage and exploitation and begging.[12] Refugees and asylum seekers, including numerous unaccompanied children from the Sudan and Somalia, have been kidnapped or lured from refugee camps or while en route, sold on and subsequently held captive in Libya or the Sinai desert for purposes of exploitation through extortion.[13]

22. After fleeing conflict, children may be compelled to work to sustain themselves and/or to support their families. Unaccompanied children often have no choice but to work

[7] See S/2015/203, para. 20 and Luz Estella Nagel, "How conflict and displacement fuel human trafficking and abuse of vulnerable groups: the case of Colombia and opportunities for real action and innovative solutions", *Groningen Journal of International Law*, vol. 1, No. 2 (2013). See also Sonja Wolte, "Armed conflict and trafficking in women" German Agency for Technical Cooperation, 2004, pp. 21-21.

[8] Kachin Women's Association Thailand, "Pushed to the brink: conflict and human trafficking on the Kachin-China border", June 2013.

[9] Ibid.

[10] Regional Mixed Migration Secretariat, *Abused and Abducted: The Plight of Female Migrants from the Horn of Africa in Yemen*, Mixed Migration Research Series, Study 7, October 2014.

[11] Ibid. See also Human Rights Watch, "Yemen's torture camps: abuse of migrants by human traffickers in a climate of impunity", May 2014.

[12] See, for example, United Nations Children's Fund (UNICEF) and Save the Children, *Small Hands, Heavy Burden: How the Syria Conflict is Driving More Children into the Workforce* (Amman, 2015); Secours catholique-Caritas France and Olivier Peyroux, *Trafficking in Human Beings in Conflict and Post-Conflict Situations* (2015).

[13] UNHCR, *Smuggling and Trafficking from the East and Horn of Africa: Progress Report* (2013).

to meet their basic needs. Iraqi and Syrian refugee children in Lebanon, for example, work in textile factories, in construction, in the food service industry, in agricultural labour or as street vendors in conditions amounting to forced labour. There appear to be organized systems within refugee camps for making these work arrangements.[14] In May 2015, the Office of the United Nations High Commissioner for Refugees (UNHCR) reported that there were at least 1,500 children, 75 per cent of whom were Syrian, begging or working as street vendors in and around Beirut, working excessive hours to earn income for their families.[15] These child labour situations often mask other forms of exploitation, such as trafficking for forced labour and sexual exploitation, and have negative consequences on children's health and education.

23. Persons fleeing conflict could also be vulnerable to trafficking for purposes of organ removal. There was evidence that migrants fleeing conflict in the Sudan were being targeted for organ harvesting in Egypt. In addition, medical practitioners from post-conflict Kosovo[16] were found to be involved in the trafficking of victims from the Republic of Moldova, the Russian Federation and Turkey to Kosovo for the purpose of organ removal (see A/68/256, para. 29). Certainly, conflict and post-conflict situations provide fertile ground for increasing vulnerability to this form of trafficking and enables impunity for exploiters.

24. Moreover, increasingly restrictive and exclusionary immigration policies, including criminalization and detention of irregular migrants, insufficient channels for regular migration and family reunification and lack of regular access to the labour market for asylum seekers, refugees and migrants further contribute to an increase in the exploitation of migrants, including through trafficking. During the past decade in particular, restrictions on entry to preferred countries of asylum have become more onerous and appear directed towards thwarting the arrival of those who might claim asylum and refugee status. This forces migrants, including asylum seekers and refugees fleeing conflict, into the arms of those able to help them circumvent controls. For such migrants, the clandestine nature of their journey, the often unscrupulous and corrupt conduct of their facilitators and collaborators and the extent to which some States will go to prevent their departure, transit or arrival all operate to create or exacerbate opportunities for traffickers who prey on their precarious situation. For instance, Rohingya from Myanmar typically embark on maritime and overland journeys, often via Thailand, to irregularly reach Malaysia. Initially smuggled across borders, some are subsequently trafficked to fishing boats and palm oil plantations for labour exploitation, ending up in bonded labour to repay the debts incurred from the transport. Others are held captive and abused in Malaysia until ransom is paid by their relatives (see A/HRC/29/38/Add.1, para. 19).

D. Trafficking during conflict

25. Individuals and communities caught up in conflict are vulnerable to a range of human rights violations. Pre-existing conditions and vulnerabilities, such as structural gender-based and other forms of discrimination affecting women, children and non-citizens, are exacerbated during conflict as opportunities for exploitation increase and protections break down. Conflicts are prolonged by actors who take advantage of situations of lawlessness to reap personal gain through lucrative activities such as trafficking.[17] In this

[14] Secours catholique-Caritas France and Peyroux, "Trafficking in human beings", pp. 25-29.

[15] Ibid., p. 27.

[16] All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999).

[17] Wolte, "Armed conflict and trafficking in women", p. 12.

section the Special Rapporteur will look into trafficking into military service and sexual and labour exploitation during conflict involving all persons, including boys, girls and migrants.

Trafficking of children into military service

26. The United Nations Children's Fund (UNICEF) estimates that some 300,000 boys and girls under the age of 18 are involved in more than 30 conflicts worldwide.[18] Children can be trafficked into military service by government armed forces, paramilitary groups and rebel groups. Hostilities and widespread displacement, as well as a general lack of security, increases children's vulnerability to being trafficked by armed groups.[19]

27. Children trafficked for forced military service perform a variety of combatant and supportive roles. Many children, typically boys, are forcibly recruited or kidnapped for use by armed militias in ongoing conflicts.[20] Children are also used as suicide bombers and human shields.[21] Others are compelled to work as porters, cooks, guards and messengers or are forced to commit crimes, such as looting and physical and sexual violence. Boys and girls in these situations are often sexually abused and may also be forced to take drugs.[22]

28. While forcible recruitment of children often involves abduction or coercion, recruiters also appeal to notions of martyrdom or social and economic factors or employ trickery or indoctrination to enlist children. There are instances where the Internet, particularly social media, has been used by extremist groups to exploit the vulnerability of young educated children from middle class families in Western countries to recruit them using deception.[23] Moreover, children are especially vulnerable to being trafficked into military service if they are separated from their families, are displaced from their homes, live in combat areas or have limited access to education.[24]

29. It is estimated that 10-30 per cent of children in fighting forces are female.[25] Girls who are forcibly recruited or abducted into military service typically face forced domestic labour and sexual violence and exploitation such as forced marriage and/or sexual slavery (see paras. 31-34 below). It is important to acknowledge that while violence and exploitation are often defining aspects of the female experience of conflict, this is not always the case. Young women and girls have also been involved in trafficking by deceiving other girls and boys into joining armed conflict, using the Internet and social media.

30. Children who are forcibly recruited or otherwise compelled to join armed groups face physical and psychological consequences. Whether in a combat or supporting role,

[18] UNICEF Factsheet: Child soldiers. Available from http://internalvoices.org/wp-content/uploads/2013/04/childsoldiers.pdf.

[19] *Amnesty International Report 2014/15: The State of the World's Human Rights* (London, 2015); Child Soldiers International, "A dangerous refuge: ongoing child recruitment by the Kachin Independence Army", July 2015; United States Department of State, *Trafficking in Persons Report: July 2015*.

[20] Secours catholique-Caritas France and Peyroux, "Trafficking in human beings", p. 19.

[21] United States Department of State, *Trafficking in Persons Report*, pp. 64 and 190.

[22] Wolte, "Armed conflict and trafficking in women", p. 18.

[23] Ashley Binetti, "A new frontier: human trafficking and ISIS's recruitment of women from the West", Information2Action, Georgetown Institute for Women, Peace and Security (n.d.); Brigette L. Nacos, "Young Western women, fandom, and ISIS", E-International Relations, 5 May 2015); Lisa Blaker, "The Islamic State's use of social media", *Military Cyber Affairs*, vol. 1, No. 1 (2015); Scott Gates and Sukanya Podder, "Social media, recruitment, allegiance and the Islamic State", *Perspectives on Terrorism*, vol. 9, No. 4 (2015), pp. 107-116.

[24] UNICEF Factsheet: Child soldiers.

[25] Child Soldiers International, "A dangerous refuge".

they are at risk of grave physical injuries as well as health consequences, such as sickness resulting from malnutrition or disease. Girls may be exposed to further health problems related to sexual violence, pregnancy and childbirth. Also significant is the impact on children's mental health related to post-traumatic stress disorder, anxiety, depression or other mental health issues.

Trafficking of women and girls for sexual exploitation

31. Conflict-related sexual violence takes many forms. Women and girls seeking to survive in conflict zones are often compelled to exchange sexual services and even to "marry" for food, shelter, protection or safe passage.[26] UNHCR has affirmed that women in conflict situations are vulnerable to a range of discriminatory practices that exacerbate their dependence (for example, receiving smaller food rations or not having rations cards or other identity documents in their own name) and are disproportionately exposed to sexual violence.[27] For women and girls abducted into military service, sexual assault is often a feature of their experience. Rape has been used as a tactic of war to humiliate and weaken the morale of the enemy, ethnically cleanse the population, destabilize communities and force civilians to flee.[28] Widespread or systematic sexual assault by government and/or opposition or rebel forces has been documented in multiple modern conflicts, including successive annual reports of the Secretary-General on conflict and related sexual violence since 2009 in which he has identified incidents and patterns of sexual violence in conflict-affected countries employed by parties to armed conflict, primarily against women and girls but also against boys and men (see, for example, S/2015/203).

32. The trafficking of women and girls for sexual exploitation, including sexual slavery, forced marriage, forced prostitution and forced pregnancy, features within the broader picture of sexual violence perpetrated against the civilian population during and in the wake of conflicts. The nexus between trafficking in persons and sexual violence is further affirmed in a statement by the President of the Security Council (S/PRST/2015/25) in which the President underscored the urgency of efforts to deter, detect and disrupt trafficking in persons, including by terrorist and violent extremist groups. Recently, an egregious pattern of abductions from their homes or schools of women and girls who are subsequently forced to marry and/or serve as sex slaves has been reported in conflict-affected settings, though some forms of this phenomenon have also been a feature of armed conflicts in the past. Such exploitation, which in some cases involves trafficking for forced marriage and sexual enslavement by extremist groups such as Islamic State in Iraq and the Levant, Boko Haram and their affiliates, is believed to be a strategy to generate revenue as well as to recruit, reward and retain fighters.[29] In order to prevent such abductions, families

[26] See, generally, Wolte, "Armed conflict and trafficking in women".

[27] Elisabeth Rehn and Ellen Johnson Sirleaf, *Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building* (New York, United Nations Development Fund for Women, 2002), p. 6.

[28] See Security Council resolutions1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2242 (2015). See also *Women2000 – Sexual Violence and Armed Conflict: United Nations Response*, April 1998.

[29] Secours catholique-Caritas France and Peyroux, "Trafficking in human beings", p. 19. See also the joint statement of the Special Rapporteur on the sale of children, child pornography and child prostitution; the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on their visit to Nigeria, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16983&LangID=E. See also Security Council resolution 2242 (2015) in which the Council recognized that sexual violence was both a tactic of war and a tactic of terrorism.

are reported to be confining women and girls and removing girls from school (see S/2015/203, para. 61).

33. Trafficking for the purpose of sexual exploitation is perpetrated not only by organized criminals. For instance, Syrian refugee women and girls are trafficked for sexual exploitation through the practice of "temporary" or child and/or forced marriages. These girls and women are often forcibly married by their parents, who view such arrangements as a way of securing their daughters safety and ensuring the family's livelihood through the bride price. Once married, such wives are likely to end up in a situation of sexual and domestic exploitation by a spouse whom they followed abroad (A/HRC/32/41/Add.1). Trafficking for forced prostitution through marriages with foreign men who then force their "brides" into prostitution in another country is also common.

34. Survivors of trafficking, sexual slavery and other forms of sexual violence perpetrated during periods of armed conflict rarely receive the assistance they need to reintegrate into society. Too often, survivors face discrimination and stigma from their families and wider community, which may make them vulnerable to being retrafficked, further stalling their rehabilitation and reintegration. Stigmatization as well as deficient judicial and legal systems typically impede access to justice for survivors. Access to justice is further impeded by discriminatory laws and regulations. Additionally, sexual and reproductive health services, trauma counselling and reintegration support, such as education and livelihood assistance, are severely limited in conflict and post-conflict areas, leaving the physical and psychological health needs of victims unmet.

Trafficking of migrant workers into conflict zones

35. Over the past decade, private contractors have been employed by States and their military to support large-scale military operations. While not all cases of contracting and subcontracting involve trafficking for labour exploitation, there have been cases where large firms that hold the prime contract with States and their militaries hire migrant workers through smaller subcontractors or local employment agencies to perform tasks including cleaning, construction, cooking and serving, and haircutting.

36. A pattern of deceptive recruitment, excessive recruitment fees, confiscation of workers' passports, dangerous working conditions and poor living conditions, debt bondage, underpayment or non-payment of wages and other types of abuse and exploitation are, in some cases, indicative of trafficking in persons for labour exploitation within the scope of the international legal definition. Examples include the exploitative recruitment of South Asian migrant workers to provide service at military worksites of conflict areas in the Middle East. The subcontractor deceives the workers about the country of work, which is more dangerous than the promised country, and the type of work to be done, and withholds workers' passports to prevent them from fleeing the conflict zone where they were deceptively hired to work.[30]

E. Trafficking in post-conflict situations

37. Post-conflict situations are typically characterized by absent or dysfunctional justice and law enforcement institutions; a consequent climate of impunity that fosters violent criminal networks; high levels of poverty and lack of basic resources; significant inequality;

[30] American Civil Liberties Union and Allard K. Lowenstein International Human Rights Clinic at Yale Law School, *Victims of Complacency: The Ongoing Trafficking and Abuse of Third Country Nationals by U.S. Government Contractors* (New York, 2012), p. 15.

large populations of highly vulnerable individuals (displaced persons, returnees, widows, unaccompanied children); fractured communities and lack of trust; and militarized societies tolerant of extreme levels of violence. These features render men, women and children in post-conflict societies especially vulnerable to trafficking.

38. In the post-conflict climate, the vulnerability of women and girls to trafficking-related exploitation is heightened by their relative lack of access to resources, education, documentation in their own name and protection. While trafficking-related exploitation is part of conflict, it is common for societies to experience a rise in trafficking for sexual exploitation (e.g., for forced prostitution) as well as other forms of gender-based violence, such as rape and domestic violence, after a conflict has formally come to an end.[31]

Trafficking involving peacekeepers

39. In 2015, more than 123,000 United Nations military, police and civilians were deployed in 16 operations around the world to prevent or contain fighting; stabilize post-conflict zones; help implement peace accords; and assist in democratic transitions (A/70/95-S/2015/446). Other intergovernmental bodies, including the African Union and the North Atlantic Treaty Organization (NATO), also have large numbers of personnel on the ground supporting the maintenance of peace and security, including in post-conflict situations.

40. Peacekeeping forces play a vital role in protecting communities, including women and children, from the violence and exploitation that is a common feature of post-conflict situations. But foreign forces can also exacerbate, and sometimes even contribute directly to, such harm.

41. Involvement of military, peacekeeping, humanitarian and other international personnel in trafficking is a complex issue and one that is not yet fully understood. Certainly, a large, militarized and predominantly male international presence can fuel the demand for goods and services produced through trafficking for labour and/or sexual exploitation.

42. A 2010 study, using Haiti, Kosovo and Sierra Leone as case studies, demonstrates the link between the introduction of peacekeeping forces into a conflict zone and the subsequent increase in human trafficking as a direct result of an increase in demand for sexual services.[32] Involvement of peacekeepers in trafficking in persons, especially women and children, can be both direct and indirect. Buying, selling or exchanging sexual services provided by trafficked women and children is an example of indirect involvement by peacekeepers. For instance, the demand for sexual services created by peacekeepers deployed in the former Yugoslavia led to an expansion of the sex industry, with many of the women trafficked and sexually exploited in brothels established expressly to serve United Nations peacekeepers. The relationship between deployed troops and the demand for trafficked women was unmistakable.[33]

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[31] See further Rehn and Johnson Sirleaf, *Women, War, Peace*; Rashida Manjoo and Caleigh McRaith, "Gender-based violence and justice in conflict and post-conflict areas", *Cornell International Law Journal*, vol. 44, No. 1 (Winter 2011); and *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2015).

[32] Charles Smith and Brandon Miller-de la Cuesta, "Human trafficking in conflict zones: the role of peacekeepers in the formation of networks", *Human Rights Review*, vol. 12, No. 3 (September 2011).

[33] See E/CN.4/2006/62/Add.2 and Human Rights Watch, *Bosnia and Herzegovina – Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*

43. International personnel are generally deployed to conflict or immediate post-conflict situations in which populations are vulnerable and basic institutions, including law enforcement, are fragile or non-existent (A/59/710). The presence of peacekeepers, through an increased demand for sexual services, further exacerbates women's social and economic vulnerabilities in a fragile post-conflict society as well as an economy of exploitation, which can support trafficking networks in the longer term. For instance, the recent cases of sexual abuse and exploitation by peacekeepers in the Central African Republic[34] who prey on the economic vulnerability of children and women as well as on their need for assistance and protection could, in some cases, be linked to trafficking for purposes of sexual exploitation.

F. International legal framework

44. The international legal framework around trafficking in conflict and post-conflict situations is a composite one that draws on multiple branches of law, including transnational criminal law, international humanitarian law, international criminal law, refugee law and human rights law. In some cases, common and overlapping rules operate to ensure that certain protections (e.g., against slavery and forced labour) are applicable in all situations, including international and non-international armed conflict. In other cases, particular rules and protections will apply depending on the nature of the situation under consideration.

45. Instead of providing a comprehensive analysis, in this part of the report the Special Rapporteur aims to provide an overview of the legal landscape by addressing the rules that govern the core violations and issues identified above.

Sources of relevant law

46. Given the complexities surrounding trafficking in conflict and post-conflict situations, which can be considered from a number of different perspectives, the range of sources of relevant law is very wide. In the human rights area, for example, treaties dealing with slavery and the slave trade, forced labour, child labour, the rights of women, the rights of children, migrant workers and persons with disabilities, as well as more general treaties dealing with civil and political rights or economic, social and cultural rights, are applicable to trafficking in all situations, including situations of armed conflict. Major crime control treaties, such as the United Nations Convention on Transnational Organized Crime and the United Nations Convention against Corruption are also relevant to trafficking in all situations, as are the specialist treaties dealing with the issue of trafficking, most particularly the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and, at the European level, the Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, and the European Union Directive on preventing and combating trafficking in human beings and protecting its victims.

47. Within the specific context of armed conflict, additional legal instruments of obligation and protection apply. The most relevant of these for the current purposes is the Rome Statute of the International Criminal Court, which addresses, inter alia, war crimes

(New York, 2002); Keith Allred, "Combating human trafficking", *NATO Review* (2006); and Rehn and Johnson Sirleaf, *Women, War, Peace*.

[34] See A/70/729 and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18548&LangID=E.

and crimes against humanity and specifically addresses grave forms of sexual violence, including rape, sexual slavery, enforced prostitution, forced pregnancy or enforced sterilization. Also of relevance are the instruments of international humanitarian law that prohibit certain conduct in the context of international and non-international armed conflict, including slavery, sexual slavery, sexual violence and forced labour. It is important to note, however, that trafficking itself, and the gender-based harm with which it is associated, has never been explicitly prohibited, or even regulated, by international humanitarian law. This despite the fact that, as shown previously, many of the worst practices associated with armed conflict, such as the forced recruitment of child soldiers, the organized sexual enslavement of women and the enlistment of civilians into forced or highly exploitative labour, could also fall within the international legal definition of trafficking. However, international instruments have been interpreted in accordance with evolving human rights norms and standards through the jurisprudence of the international tribunals.

48. Other accepted sources of international law, such as State practice, custom and the decisions of international tribunals, can also be relevant when determining exactly what is required of States with respect to their response to trafficking in situations of conflict. In relation to custom, for example, the prohibition on slavery is recognized to be a part of customary international law, binding on all States irrespective of whether they have actually become party to one or more treaties that specifically prohibit slavery in all situations, including in conflict. The prohibition on forced labour of civilians has also been identified as a rule of customary international humanitarian law (see para. 53 below). Examples of judgments of international tribunals that have helped to shape the international legal framework include *Rantsev v. Cyprus and Russia*, decided by the European Court of Human Rights in 2010, which is relevant to State responsibility to investigate and prevent trafficking, and the decision by the International Tribunal for the Former Yugoslavia in *Prosecutor v. Kunarac et al.* (2001) convicting the defendants of enslavement as a crime against humanity.

49. Finally, several soft law instruments reflect and contribute to the relevant international legal framework. These include the principles and guidelines on human rights and human trafficking recommended by the United Nations High Commissioner for Human Rights; UNHCR guidelines on trafficking and asylum; resolutions of the General Assembly and the Human Rights Council; findings and reports of international human rights mechanisms such as treaty bodies and special procedures; and non-treaty agreements between countries regarding issues such as the repatriation and reintegration of trafficked persons as well as between the United Nations and Member States on matters relating to peacekeeping.

Laws and instruments that address specific violations related to trafficking in conflict and post-conflict situations

50. **Prohibition on trafficking and migration-related exploitation**. International law requires States to criminalize and penalize a range of conduct related to trafficking. The obligation to criminalize trafficking when committed intentionally is set out in article 5 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Most States (168, as at October 2015) are party to the Protocol and thereby bound by this obligation. Many States are also bound by one or more of the regional trafficking treaties, such as the Council of Europe Convention and the European Union Directive cited above, which impose identical obligations.

51. **Prohibition on enslavement, including slavery**. International law prohibits slavery, servitude and practices similar to slavery, including debt bondage and serfdom, and servile forms of marriage and exploitation of children. The prohibition on slavery (defined

as "the status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised")[35] is one of the oldest of all international legal norms, enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and several of the specialist and regional human rights treaties. Slavery and its associated practices are identified in the international legal definition of trafficking as a "purpose" of trafficking.

52. **Prohibition of sexual exploitation**. Sexual exploitation is one of the purposes of trafficking stipulated in the international legal definition. However, it is not defined in any of the specialist trafficking instruments and has no agreed definition in international law except when it involves children.[36] There have nevertheless been various attempts to attach a particular understanding to the term in relation to specific settings. For example, in connection with its policies around sexual exploitation and abuse by United Nations personnel, the Secretary-General has defined sexual exploitation as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another".[37] State practice would appear to support an understanding of sexual exploitation in the context of trafficking that includes a broad range of practices such as forced prostitution, forced surrogacy, forced or fraudulent marriage and all forms of commercial and other sexual exploitation of children.[38]

53. **Prohibition on forced labour**: ILO core instruments as well as the International Covenant on Civil and Political Rights and all regional human rights conventions expressly prohibit "forced or compulsory labour". The ILO Forced Labour Convention, 1930 (No. 29) defines this as "all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". The international legal prohibition on forced labour has been reaffirmed through the adoption of the Protocol of 2014 to the Forced Labour Convention 1930. The purpose of this new instrument is to take a more comprehensive approach to forced labour by focusing specifically on issues of prevention, protection and remedy, and also to work towards the abolition of human trafficking that results in forced labour.[39]

54. **Prohibition on recruitment and use of child soldiers**. International law — both human rights law and international humanitarian law in their treaty and customary forms — prohibits, absolutely, the recruitment of children into armed conflict, whether by armed forces or armed groups. This prohibition forms part of a broader rule that children must not be allowed to take part in hostilities. While the definition of "child" in international law encompasses persons up to 18 years of age, most treaty-based prohibitions on the use and recruitment of child soldiers stipulate that the prohibition applies to children under the age of 15.[40]

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[35] Article 1 of the Slavery Convention of 1926.

[36] Convention on the Rights of the Child, art. 34 and Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, arts. 3 (b) and 18-23.

[37] See ST/SGB/2003/13, sect.1. The Office of Internal Oversight Services, responsible for investigating misconduct, has stated that "engaging in sex with prostitutes" is an example of sexual exploitation. See https://oios.un.org/page?slug=frequently-asked-questions.

[38] See United Nations Office on Drugs and Crime, *The Concept of "Exploitation" in the Trafficking in Persons Protocol*, Issue Paper (Vienna, 2015).

[39] International Organisation of Employers (IOE)-ILO Guidance Note on the 2014 Protocol to the Forced Labour Convention, 1930.

[40] See Convention on the Rights of the Child, art. 38 (3); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, arts. 2 and 3; ILO Worst Forms of Child Labour Convention, 1999 (No. 182), arts. 1 and 3; Protocol Additional to the Geneva

55. **Special legal situation of trafficking involving peacekeeping forces.** With regard to criminal accountability of peacekeepers, the core instrument is the status of forces agreement (A/45/594) that the United Nations concludes with countries that contribute troops to its peacekeeping and peacebuilding operations. Under these agreements, contributing countries retain exclusive responsibility for disciplining and criminally sanctioning their military contingents. In addition, recent reports to the Secretary-General, as well as resolutions of the General Assembly and Security Council continually address gaps in addressing human rights violations committed by peacekeeping forces.[41] In relation to other personnel (e.g., civilian advisers) over whom the contributing country does not have exclusive jurisdiction, the United Nations will generally refer the case to the contributing country.[42]

56. **Rights of victims of trafficking in armed conflict**. Victims of trafficking are entitled to the same rights, due diligence protection and prevention against trafficking in persons by States whether in times of conflict or otherwise. These rights include:

(a) *Right to be identified.* The recommended principles and guidelines on human rights and human trafficking and the commentary to the Council of Europe Convention on Action against Trafficking highlight that failure to correctly identify a trafficked person, or to identify her or him at all, will directly affect the ability of that person to access the rights to which she or he is entitled. States are therefore required to take positive steps to identify victims of trafficking accurately and in a timely manner and to ensure that they are referred to appropriate services. During situations of conflict, the risk of identification failures is very high;

(b) *Right to protection.* International law requires States to ensure that victims of trafficking under their jurisdiction or effective control are protected from further exploitation and harm. To that end, States are required to take reasonable measures, within the scope of their powers, to move the victim out of the place of exploitation to a place of safety; attend to the victim's immediate medical needs; assess and address the risk of the victim being subject to intimidation or retaliation; and protect the victim's privacy. However, during conflict, even the most basic and urgent victim protection measures may be difficult or impossible to secure;

(c) *Right to assistance and support.* The State in which a trafficked person is located is required to provide that person with adequate physical and psychological care to meet at least immediate needs. While the substantive content of this obligation is not yet settled, there is general agreement that the right to assistance and support includes provision of appropriate shelter; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities. Special attention should also be given to the needs of particular groups, including victims who are disabled or otherwise especially vulnerable. In the case of child victims, international law requires that the overarching rule of "the best interests of the child" guide decision-making about support;

Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 77 (2); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 4 (3) (c); and Rome Statute of the International Criminal Court, art. 8 (2) (b) (xxvi) and (e) (vii).

[41] See A/70/95-S/2015/446, A/70/357-S/2015/682, S/2015/716, A/70/729 and "Taking action on sexual exploitation and abuse by peacekeepers", report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic, December 2015.

[42] See ST/SGB/2003/13 and Carla Ferstman, "Criminalizing sexual exploitation and abuse by peacekeepers", United States Institute of Peace Special Report 335, September 2013.

(d) *Access to remedies.* International law provides victims with the right to adequate and appropriate remedies for the harm they have suffered. The form of remedy should, as far as possible, expunge the consequences of the breach and re-establish the situation that existed prior to its occurrence. In trafficking cases, compensation for harm as well as for material losses, such as unpaid wages, is an important form of remedy. As the mandate of the Special Rapporteur has amply demonstrated (A/HRC/17/35, A/HRC/17/35/Add.6 and A/HRC/26/32), the right to a remedy is often not effectively available to trafficked persons because laws, policies and mechanisms for such remedies are weak or non-existent and even where the necessary infrastructure is in place, victims frequently lack information on the possibilities and processes for obtaining remedies. Conflict exacerbates the scale and impact of these obstacles. Where trafficking-related exploitation occurs within a situation of conflict, the possibility for victims to secure adequate and appropriate remedies is remote because the State most directly concerned often lacks the capacity to deliver such remedies, and it is difficult or impossible to determine who is legally responsible for providing access to remedies and how this responsibility can be enforced;

(e) *Right to safe return/protection from retrafficking/protection from persecution.* All victims of trafficking who are not residents of the country in which they find themselves are entitled to return to their country of origin. This right places an obligation on the part of the country of origin to receive its returning nationals without undue or unreasonable delay. The right to return also implies an obligation on the country of destination to permit those victims who wish to return to do so, again without undue or unreasonable delay. Detention of trafficked persons in shelters, prisons or immigration detention facilities is one way in which the right to return can be interfered with. International law supports a standard of safe and preferably voluntary return for trafficked persons, which implies, at a minimum, that steps are taken to ensure that victims are not at serious risk of retrafficking or persecution. The right to seek and claim asylum from persecution requires States to avoid returning victims to situations of persecution or risks of serious human rights violations. Issues around return are complicated by conflict.

IV. Conclusion

57. All forms of trafficking in persons can be found in situations of conflict, including trafficking for forced prostitution and other forms of sexual exploitation; trafficking for forced military recruitment, including of children; trafficking for other forms of forced labour; trafficking for forced criminality; and trafficking for slavery, for servitude and for removal of organs.

58. However, conflict influences the form and nature of trafficking in different ways. First, the severity of trafficking-related exploitation appears to be greater when it occurs during or, indeed, after conflict, enhanced by conditions that are themselves a cause or consequence of conflict, such as impunity and increased, generalized violence. Second, certain forms of trafficking-related exploitation are either particular to conflict or more prevalent in situations of conflict, such as forced military recruitment of both children and adults. Sexual exploitation is another form of trafficking that intersects with the dynamics of situations of conflict, including the use of proceeds from trafficking, trading and ransoming individuals to purchase arms and pay fighters, which perpetuates the cycle of violence against civilians.

59. A range of conditions particular to, or commonly associated with, situations of conflict fuel trafficking by amplifying vulnerabilities and increasing opportunities for exploitation. These include, but are not limited to, a distorted economy that is heavily reliant on criminality and the presence of organized criminal groups already involved

in cross-border trafficking of arms, drugs and other illicit products that have the capacity to expand into trafficking in persons and that are in a position to take advantage of additional opportunities to generate profit. A weak or non-existent justice and protection system that perpetuates impunity fails to protect the most vulnerable groups and individuals of society from exploitation. Porous borders that make border crossing easier further contribute to trafficking. Other factors include a high prevalence and toleration of violence that extends beyond armed forces to include communities and families, as well as pressure to move, leading to dangerous migration decisions.

60. These and other factors do not just create the conditions under which trafficking can occur; they also exacerbate the vulnerability of those who may already be susceptible to being trafficked, including women, refugees and unaccompanied children.

61. In addition, the nature and form of trafficking in persons associated with conflict are highly gendered. For example, abduction into military forces affects males and females differently. Men and boys are typically forced into soldiering while women and girls are generally forced into support roles and typically face much greater risk of sexual assault as either a primary purpose or an additional manifestation of their exploitation. As previously noted, sexual enslavement, a practice exacerbated by situations of conflict, is highly gendered in that it disproportionately affects women and girls. Other forms of trafficking-related exploitation particular to or especially prevalent in conflict, including forced and temporary marriage, are highly gendered in their motivation and impact, which underscores the importance of a gender analysis in all trafficking prevention efforts and responses.

62. Finally, while the Special Rapporteur in the present report raises international awareness of the forms and nature of trafficking in persons related to the complex situation of conflict, she by no means deals exhaustively with all such forms and types of trafficking. As new types of conflict arise and modern means of combat are used, further research is required to identify new and emerging forms of trafficking related to conflict.

V. Recommendations

63. In view of States' legal responsibility to identify, protect and assist trafficked persons in all circumstances, including in conflict and post-conflict situations, and to work to ensure that those responsible for violations of human rights and the laws of war are held accountable, the Special Rapporteur offers the following recommendations.

Recommendations in relation to trafficking of persons in conflict areas or trafficking of persons fleeing conflict

64. All States, particularly those hosting potential victims of trafficking among persons fleeing conflict, should:

(a) Protect people, particularly children, women and minority groups in conflict-affected areas and people fleeing conflict, from all forms of trafficking in persons;

(b) Identify measures to prevent exploitation of the labour of nationals and non-nationals fleeing conflict, including by establishing safe and legal channels of

migration, respecting the principle of non-refoulement and ensuring that migrants have regular access to the labour market in the host country, in cooperation with United Nations agencies and programmes and international organizations;

(c) Ensure free-of-charge birth and marriage registration of nationals and non-nationals fleeing conflict, including in internally displaced person and refugee camps, in cooperation with United Nations agencies and programmes and international organizations, in order to prevent or address potential trafficking in children for sexual and other forms of exploitation and the exploitation of the labour of individuals, particularly underage children and women;

(d) Prevent and prosecute all forms of trafficking in persons for all purposes, including for temporary, forced and/or servile marriages;

(e) Grant non-national victims of trafficking residence status and assistance, not to be made conditional on the initiation of criminal proceedings or their cooperation with law enforcement authorities;

(f) Adequately train all stakeholders, including peacekeepers and humanitarian personnel working in conflict zones, in refugee camps and in areas of arrival of large influxes of people fleeing conflict, to identify trafficking or risks of trafficking, in cooperation with United Nations agencies and programmes, international organizations, host countries and civil society organizations;

(g) Establish and/or adapt national referral mechanisms for assistance and protection services, including gender- and child-sensitive measures, for victims and potential victims of trafficking in persons, involving national authorities and civil society organizations in the decision-making, especially relating to the identification and protection of victims and potential victims;

(h) Not detain, prosecute or punish victims of trafficking for violations of immigration laws or for unlawful activities they were involved in as a direct consequence of their situation as trafficked persons, including violations and offences linked with prostitution, petty crime and irregular entry/stay in the host country.

65. United Nations agencies and programmes, international organizations and humanitarian actors should:

(a) Share and apply measures, methodologies and indicators to identify as early as possible and prevent trafficking in persons from the outset of a conflict/crisis, even if incidents of trafficking have not been previously detected, and to identify at an early stage trafficking or risks of trafficking, including for the purpose of sexual exploitation and labour exploitation or other forms of exploitation in source, transit or host countries;

(b) Establish or revise existing standard operating procedures and conduct training for personnel, including personnel of contractors and implementing agencies who are likely to enter into contact with victims and potential victims of trafficking as well as with traffickers. These should include instructions concerning protective measures, including appropriate and tailored assistance, to be applied when indications of trafficking, exploitation or risk of trafficking are found, in collaboration with authorities and civil society organizations;

(c) Include prevention of trafficking in persons as part of life-saving protection activities, from the outset of a conflict/crisis;

(d) Include rights-based anti-trafficking response/action in existing cluster systems for humanitarian action;

(e) Cooperate with Government and actors involved in the short- and long-term response to conflict, including with respect to the social integration of victims of trafficking in persons.

Recommendations in relation to protection of children from trafficking in persons

66. **States hosting, among persons fleeing conflict, children who may have been or are at risk of being victims of trafficking in persons should:**

(a) Prevent trafficking in persons, especially targeting unaccompanied children such as orphans, children left behind by parents fleeing conflict and children moving alone to flee conflict areas, in cooperation with national civil society organizations, United Nations agencies and programmes and international organizations;

(b) Adopt proactive measures to protect children caught in conflict that are based on the best interest of the child and in line with international humanitarian, human rights and refugee law, when indications of child trafficking or risk of child trafficking are identified;

(c) Recognize the specific vulnerability of trafficked girls or potential victims of trafficking for sexual and labour exploitation in conflict and post-conflict situations and take measure to reduce the vulnerabilities;

(d) Ban administrative detention of children, in particular but not only for violations of immigration laws and regulations;

(e) Ensure that trafficked children and other trafficked persons are not detained, prosecuted or punished for violations of immigration laws or for unlawful activities they are involved in as a direct consequence of their situation as trafficked persons.

67. **The United Nations should ensure that child trafficking is linked to the six grave violations and abuses against children.[43] Such violations should be taken into consideration as a ground on which to bar countries repeatedly listed in the annual reports of the Secretary-General on children and armed conflict as being involved in those violations from contributing troops to United Nations operations.**

Recommendations for strengthening responses to address trafficking of women and girls for purposes of sexual exploitation in conflict and post-conflict situations

68. **All States, whether a source, transit or destination country of women and girls trafficked for sexual exploitation in conflict and-post conflict areas, should:**

(a) Recognize and address the vulnerability of women and girls fleeing conflict to trafficking for sexual exploitation, whether in refugee/internally displaced persons camps or at the hands of the military, extremist groups or family members;

(b) Prevent early marriages, whether in refugee/internally displaced persons camps or in the society of the host country;

(c) Prevent and prosecute all forms of trafficking of women and girls for temporary, forced and/or servile marriages;

[43] See Security Council resolution 1612(2005) and https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/.

(d) Identify, protect and assist victims of trafficking for sexual exploitation and sexual slavery;

(e) Address the root causes of trafficking in persons on the basis of a gender-sensitive approach, in cooperation with civil society organizations, United Nations agencies and programmes and international organizations;

(f) Ensure that issues concerned with sexual and other forms of gender-based violence, including human trafficking, are incorporated into peacebuilding and post-conflict reconstruction processes and support women's full and equal participation in decision-making, especially when this relates to trafficking issues in conflict situations, in line with the general guidelines and recommendations of the *Global Study on the Implementation of United Nations Security Council Resolution 1325*.

Recommendations in relation to the prevention of trafficking in persons for labour exploitation in conflict and post-conflict areas

69. State contracting agencies of armed forces deployed in conflict and post-conflict areas, including in the context of peacekeeping operations, should:

(a) Exercise due diligence when employing workers, including migrant workers, to provide goods and services and must help ensure that businesses operating in conflict and post-conflict areas are not involved in human rights abuses, including trafficking in persons for labour exploitation;

(b) Whenever possible, hire workers directly rather than by engaging contractors or subcontractors or using intermediate agencies, to ensure that the supply chain is free of trafficked persons;

(c) Ensure that business enterprises in conflict areas, whether private or State-owned/supported, are not involved in trafficking in persons, including for the purpose of labour exploitation; and ensure transparent and strict requirements for the entire recruitment process and strict rules for placement and employment agencies;

(d) Require and ensure that private individuals or companies they have contracted or subcontracted protect the rights of workers, including migrant workers and refugees, and provide decent working and living conditions to workers, including safeguarding their right to return and their freedom of assembly and association;

(e) Exercise due diligence to prevent or mitigate trafficking committed by subcontracted private individuals or companies that are directly linked to their operations, even if the State agencies of armed forces have not themselves contributed to the violations;

(f) Establish monitoring and control mechanisms at labour sites with an effective complaint mechanism to enable workers to report instances of trafficking.

Recommendations in relation to anti-trafficking action in peacekeeping operations

70. States contributing personnel to peacekeeping operations should:

(a) Waive the immunity of peacekeepers as soon as indications of their involvement in trafficking situations or exploitation have been discovered and prosecute perpetrators without delay;

(b) **Ensure that mandatory trainings for peacekeeping personnel include the prevention of trafficking, the identification of situations involving trafficking or risks of trafficking, and assistance to and protection of victims and potential victims, in cooperation with United Nations agencies and programmes and international organizations;**

(c) **Ensure adequate protection of whistleblowers and prevent any adverse impact on their careers and working conditions;**

(d) **Disclose publicly information on disciplinary and administrative procedures taken by contributing countries in relation to alleged perpetrators within their troops;**

(e) **Implement the special measures for protection from sexual exploitation and sexual abuse by United Nations peacekeeping personnel proposed by the Secretary General (A/70/729) and the recommendations contained in the report of the independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic, "Taking action on sexual exploitation and abuse by peacekeepers".**

71. **The United Nations should:**

(a) **Continue its effort to implement and reinforce the United Nations zero-tolerance policy on sexual exploitation and abuse by peacekeepers[44] and ensure the protection of victims, including by negotiating with the host country the possibility of granting subsidiary jurisdiction to hear and adjudicate claims of sexual abuse and exploitation, and provide compensation to victims of trafficking in persons;**

(b) **Address labour exploitation by making all necessary efforts to ensure that, in conflict and post-conflict areas and including in the context of peacekeeping operations, all workers, including migrant workers, employed by State and non-State military actors, their contractors and subcontractors are employed in decent conditions of work, and establish a zero-tolerance policy towards violations of those workers' fundamental rights.**

Recommendations in relation to research and awareness-raising

72. **Concerned governmental institutions, law enforcement authorities, civil society organizations, academia, United Nations agencies and programmes and international organizations should undertake further research on the different forms of trafficking in persons in relation to conflict and post-conflict situations, including on:**

(a) **The linkage between trafficking in persons and xenophobia, including the vulnerability of minority groups to trafficking;**

(b) **The linkage between gender and trafficking in persons in conflicts, not only with regard to girls and women but also boys and men;**

(c) **Recruitment modalities employed by extremist groups, especially with respect to children and their use as combatants, sexual slaves, human shields or suicide bombers;**

[44] See A/70/95-S/2015/446, A/70/357-S/2015/682, S/2015/716, A/70/729, Security Council resolutions 2242 (2015) and 2272 (2016) and "Taking action on sexual exploitation and abuse by peacekeepers".

(d) The link between organized crime and all forms of trafficking in persons, especially women and children, as a result of a weak rule of law during and following conflicts;

(e) The role of individual, family, and/or community-based criminal intermediation in fuelling human trafficking, especially for the purpose of temporary, forced and/or servile marriages related to conflict;

(f) Trafficking in persons for the purpose of removal of organs in the context of conflict;

(g) Early identification of cases of trafficking in persons, especially women and children, in the context of massive influxes of migrants as a result of conflict.

73. The media should be adequately sensitized on the linkage between trafficking in persons, especially women and children, and conflict and be aware of its gender dimension, in order to be able to report correctly about incidents of trafficking affecting girls, boys, women and men occurring in such circumstances.

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Report of the Special Rapporteur trafficking in persons, especially women and children, on her mission to Jordan*

Note by the Secretariat

The Special Rapporteur on trafficking in persons, especially women and children, visited Jordan 28 January to 4 February 2016, at the invitation of the Government. In the present report, the Special Rapporteur highlights the country's commitment to combating trafficking in persons, as evidenced by its legislative and policy framework that protects migrant workers, its multidisciplinary approach in taking anti-trafficking measures and the establishment of a shelter for trafficked persons. Various initiatives further improve implementation of labour standards while promoting competitiveness.

She nonetheless expresses concern about, inter alia, the perception that human trafficking in Jordan mainly involves labour exploitation of non-Jordanians, to the neglect of other forms of trafficking including trafficking for sexual exploitation, begging and organ transplant, which involve Jordanians, migrants and the refugee and asylum-seeking population. Moreover, given the influx of migrant workers, refugees and asylum seekers, immigration practices do not provide opportunity for accurate identification and protection of trafficked persons. Other concerns include the absence of an updated national strategy to combat trafficking and standard operating procedures, the placement of victims in shelters without freedom of movement and the low prosecution rates for trafficking cases.

On that basis, the Special Rapporteur makes a number of recommendations to the Government, including with regard to ratification of key international legal instruments, strengthening of national legislation and policies to combat trafficking, and increasing capacity-building activities for government officials. The Special Rapporteur also encourages the Government to address gaps in the assistance provided to victims of trafficking, especially in terms of providing them with effective remedies, and increasing

* The present report was submitted after the deadline in order to reflect the most recent developments.

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the involvement of civil society organizations in the provision of assistance to victims. She also calls on the Government to improve the justice delivery system and strengthen its cooperation with source countries to address root causes of trafficking and create more opportunities for safe migration.

Report of the Special Rapporteur trafficking in persons, especially women and children, on her mission to Jordan*

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* Circulated in the language of submission and in Arabic only

I. Introduction and methodology

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Jordan from 28 January to 4 February 2016, at the invitation of the Government. The objectives of the visit were to examine the prevalent forms of trafficking in persons in the country and to assess the effectiveness of measures taken by the Government to combat trafficking in persons and to protect the human rights of trafficked persons.

2. During her visit, the Special Rapporteur met high-level officials from the Ministries of Justice, Social Development, Interior, Labour, and Industry and Trade, as well as the National Anti-Trafficking Committee, the National Council for Family Affairs and the Jordanian National Commission for Women.

3. Moreover, she exchanged views with members of the judiciary (from the Court of Cassation, the criminal courts, the Public Prosecutor's Office, the Civil Registration Department and the religious courts) and the Counter-Trafficking Unit within the Public Security Department. She visited the Karama (which means dignity) Shelter for Victims of Trafficking run by the Ministry of Social Development and another run by the non-governmental organization (NGO) the Jordanian Women's Union, where she was able to interact with victims of trafficking. In addition, she visited the women's section of the Juwaidah Correctional and Rehabilitation Centre and the Al-Azraq refugee camp for Syrian refugees and asylum seekers.

4. She also met with representatives of the National Centre for Human Rights and civil society organizations (CSOs). Finally, she exchanged views with representatives of the United Nations agencies and programmes in the country. The Special Rapporteur expresses her gratitude to the Government for its invitation and cooperation and to CSOs for their valuable input. She is also grateful to the victims of trafficking who shared with her their experiences in the hope of preventing future trafficking. The Special Rapporteur learned that the forms of trafficking set forth below are particularly widespread in the country.

II. Main findings

A. Forms and manifestations of trafficking in persons

5. Jordan faces challenges as a destination and, to a lesser extent, a transit country for women, girls, men and boys subjected to trafficking in persons. As a destination country, it receives trafficked persons, mainly from South Asia, South-East Asia and North Africa. Trafficked persons may also transit through Jordan on route to destinations in Europe.

6. The country's geographical location within the region, its security situation and upper-middle economy attracts migrant workers, notably from Egypt (63.5 per cent of all migrant workers), Bangladesh (13 per cent), Sri Lanka (5.3 per cent), the Philippines (4.8 per cent), India (3.1 per cent) and Pakistan (1.5 per cent),[1] who willingly embark on the journey to Jordan in search of better employment opportunities in the agriculture, construction, garment (within the Qualified Industrial Zones) and tourism and hospitality sectors and domestic work. The generous refugee policy of Jordan also contributes to a large influx of refugees and asylum seekers. At the end of 2015, there were some 635,324

[1] See Ministry of Labour, *2014 Annual Report*.

registered Syrian refugees and asylum seekers, of whom 50.7 per cent were female.[2] There were also 53,334 Iraqi[3] and more than 2 million Palestinian[4] refugees and asylum seekers in the country. While not all cases of migration result in trafficking, there are cases of mixed migration that include refugees, asylum seekers and migrants, who end up being trafficked.

7. The causes of trafficking include not only conflict, poverty and a lack of economic opportunities in source countries, but also the high demand for cheap labour and sexual services in Jordan. There is also a need for domestic work for middle- to high-income households in Jordan. The sponsorship (*kafala*) system, which is not explicitly mentioned in the country's laws, although it is widely practised, contributes to trafficking by binding migrant workers to their employers through residency and work permits for legal stay in Jordan (see subsection B below).

8. Traffickers' modi operandi typically involve deceptive and fraudulent practices regarding the nature and type of the employment conducted by unscrupulous recruitment agents - in source countries and Jordan - and employers. Most commonly, victims are exploited through breaches of contracts, payment of excessive recruitment and permit fees normally borne by employers, reduction or non-payment of salary, long working hours and a lack of rest days. Many find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers for their journey, when promises of well-paying employment turn into exploitative situations. Passport and wages retention are also common practices to limit the freedom of movement of migrants workers.

1. Trafficking for labour exploitation

9. In 2014, there were 324,410 migrant workers in Jordan.[5] While not all migrants are subject to trafficking, many cases of labour trafficking in Jordan involve mainly low- and semi-skilled migrant workers mainly working in the agricultural, construction and manufacturing sectors.

10. A recent case of alleged trafficking for labour exploitation in the textile industry in one of the Qualified Industrial Zones involved the deceitful recruitment of 40 workers from Bangladesh and consequent labour rights violations amounting to human trafficking. Upon their recruitment in Bangladesh by the supervisor of the company, the workers expected to be employed for a renowned company, only to find they had been lied to regarding the place, type and amount of work to be done in Jordan. Indebted, many kept working under exploitative working and living conditions until the temporary closure of the company for investigation, following human rights violations denounced by some workers.

11. There are also indications that Syrian refugees and asylum seekers, including women and children, who are not authorized to access the labour market in Jordan are lured to work illegally to sustain their families, which puts them at risk of trafficking. Information was shared with the Special Rapporteur on a case where an entire family, including children as young as 3 years old, was tricked into working in the agriculture sector for a low wage, which was never paid. Because of the dire financial situation of the family, they continued working in exchange for the employer providing a roof over their heads. Many Syrian children are the sole breadwinners of their families and work primarily in retail and services, while girls in particular also work in domestic service and agriculture.

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[2] See Office of the United Nations High Commissioner for Refugees, "Syria Regional Refugee Response", http://data.unhcr.org/syrianrefugees/country.php?id=107.

[3] Ibid.

[4] See United Nations Relief and Works Agency for Palestinian Refugees in the Near East, "Where we work", www.unrwa.org/where-we-work/jordan.

[5] Ministry of Labour, *2014 Annual Report*.

There is growing concern that these children may be subject to the worst forms of child labour, including through trafficking by those who prey on their need for financial security.

2. Trafficking for domestic servitude

12. Jordan hosts some 70,000 migrant domestic workers - with an estimated twice that number employed unofficially -[6] mostly from Bangladesh, Ethiopia, Indonesia, Kenya, the Philippines and Sri Lanka. A large number faces systematic abuse, in some cases amounting to trafficking for domestic servitude, by employment agencies based in their home country or Jordan, as well as their Jordanian employers.

13. The Special Rapporteur heard first-hand about the abuses and exploitation that further contribute to the trafficking situation, including breaches of contract, non-payment of salary, deductions of recruitment and permit fees from low wages and work in different households of members of the employers' family, including in their businesses, for one salary, if any. Moreover, migrant domestic workers work excessive hours with no rest days. At the hand of their employers and their families, many domestic workers experience physical and mental abuse ranging from being deprived of food to beatings, sleeping on kitchen floors or balconies, being pushed off of apartment balconies, being confined in houses, being prohibited from accessing health care and outside communications, harassment, sexual assault and psychological abuse, including racism and xenophobic statements. Employers, who have incurred costs to sponsor domestic workers, see such actions, especially the withholding of passports, as "guarantees" for getting their money's worth of work and preventing escapes.

14. Often employment agencies also play a role in the trafficking of domestic workers. This includes physical and psychological abuse of migrant domestic workers shortly after their arrival in Jordan to frighten and discourage them from leaving or complaining about their employers. It is also common for domestic workers who have left their employment or complained about exploitation to employment agencies to be forcibly returned either to their abusive employers or new employers after facing further abuse by agents. Domestic workers are also often made to illegally perform domestic work in different houses for a short period.

15. Victims who report abuse to the police are immediately detained as a result of absconding[7] or employers sometimes lodge false reports of theft as punishment. They are then either returned to their employers or imprisoned and deported rather than being offered protection and alternative employment.

3. Trafficking for sexual exploitation

16. According to the limited information available, Jordan is a destination for the trafficking of women and girls and boys into the sex industry. Factors contributing to trafficking in women and children for sexual exploitation include the demand for sexual services and the existence of a large migrant worker community.

17. Domestic workers who leave exploitative work conditions or are in search of better-paid employment become irregular migrants in Jordan and risk detention and expulsion. They are therefore particularly vulnerable to trafficking for sexual exploitation in closed houses by employment agents, boyfriends or other migrants whom they approach for help.

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[6] See Jordan, Ministry of Labour, "Statistics", http://web.dos.gov.jo/?lang=en.

[7] Domestic workers who have left an abusive employment relationship are referred by authorities and employers as "runaway" or "escaped" domestic workers, who are liable to imprisonment and deportation.

Additionally, young women are lured from their home countries with false promises of legal work in Jordan, such as domestic work, babysitting and waitressing, by agencies that take advantage of their vulnerable and disadvantaged situations. Upon arrival, victims' passports are confiscated and they are forced to provide sexual services to repay the debts incurred for their travel. If they refuse, they are beaten up and threatened that, if they leave their employers or go to the police, they risk imprisonment then deportation for immigration offences and/or soliciting prostitution.

18. Syrian refugee women and girls are also trafficked for sexual exploitation through the practice of "temporary" or child and/or forced marriages to Jordanians and older men from Gulf countries. Besides being arranged by middle men, girls are often forcibly married by their parents, who view it as a way of securing their children's protection and ensuring the family's livelihood through the bride price. Once married, trafficked wives are likely to end up in a situation of sexual and domestic exploitation. The Special Rapporteur learned of the severity of the exploitation that such type of trafficking can lead to through the case of a 17-year-old Syrian girl forcibly married to 13 different men from Jordan and Gulf countries over two years. For each "marriage", which lasted from one day to one month, the victim was forced to undergo hymen reconstruction surgery at a private clinic in Amman by her traffickers – her single mother, a family friend and a doctor.

4. Other forms of trafficking in persons

19. There are also indications that trafficking for the purpose of forced begging is taking place, involving the refugee and asylum-seeking population inside and outside camps and some Jordanians and Egyptians. Most perpetrators are allegedly family members or members of organized begging rings who force women, girls and boys to engage in illegal begging on the streets in the hope that the authorities will be lenient on them.

20. In addition, the Special Rapporteur was informed about trafficking for organ removal involving both Jordanians living in poverty and Syrian refugees and asylum seekers. Surgeries are mostly done outside the country. A case involving a Jordanian victim who agreed to sell his kidney for a larger amount than he actually received following deception by traffickers was related to the Special Rapporteur. After the surgery in Egypt, he was given less than 15 per cent of the promised sum by the traffickers, who then disappeared.

B. Criminalization of irregular migration and the impact on trafficked persons

21. The economy of Jordan relies to a large extent on the low- or semi-skilled labour of migrant workers, particularly in sectors such as construction, manufacturing, services, agriculture and domestic work.

22. Jordanian immigration policy requires prospective migrant workers to go through employment agencies for work in Jordan. All migrant workers are required to possess a work permit, which is renewed annually, and a residence permit obtained by their employers.[8] Such sponsorship system (*kafala*) gives employers excessive power and control over migrant workers, which increases their risk of being trafficked: if they report or escape their exploitative conditions, employers can simply revoke their work permit, leaving irregular migrants liable to lose their livelihood and be expelled from the country. In some

[8] Law No. 24/1973 on Residence and Foreigners' Affairs relating to residence permits for migrant workers.

cases, migrant workers' vulnerability to exploitation is heightened when employers fail to secure or renew their permits or when they are made to work in another sector to the one for which they were given a permit. This leaves the migrant workers liable to detention of up to six months, the payment of overstay fines and expulsion. Often, migrants cannot even pay the fines, as some have not been receiving salaries. So they remain in prison and are then deported. While the Ministry of Interior provides for exemption from fines in some cases, including those involving human trafficking, the Special Rapporteur was informed that the procedure for seeking exemption can sometimes take a long time.

23. In order to promote safer labour migration, the Government has promulgated commendable labour laws protecting the rights of workers, including migrant domestic workers - a first in the region. It has entered into bilateral memorandums of understanding with several countries (see subsection J below) that facilitate and provide legal avenues for migration and the recruitment of migrant workers from source countries. Furthermore, in an attempt to regularize the situation of irregular migrant workers already in the country, the Government has issued residence permits to migrant workers in irregular situations who wished to stay in the country and deported those who wished to go back to their countries without prosecution. It is noteworthy that the handling of irregular migrants by Jordan has occasionally become an issue of contention with source countries; for example, Kenya and the Philippines have in the past banned their nationals from migrating to Jordan.

24. Moreover, opportunities for safe migration for low-skilled labour, particularly for refugees and asylum seekers who seek legal employment, remain inadequate and the enforcement of existing labour laws regarding migrant workers is lax. The regulation of employment agencies that commit or are involved in human trafficking is also ineffective. Employers of domestic workers are rarely prosecuted for offences related to passport, residence, employment and criminal law.

C. Legislative, policy and institutional framework

1. Legislative framework

(a) International and regional framework

25. Jordan is party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Trafficking in Persons Protocol), and a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has also ratified the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization (ILO).

26. Regrettably, Jordan is not party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Instead, it has concluded a Memorandum of Understanding with the Office of the United Nations High Commissioner for Refugees (UNHCR) that sets the parameters for cooperation on the issue of refugees and asylum seekers in 2008 and 2014. Moreover, Jordan has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the Domestic Workers Convention, 2011 (No. 189), the Protocol of 2014 to the Forced Labour Convention, 1930, or the Private Employment Agencies Convention, 1997 (No. 181) of ILO.

(b) National framework

27. At the national level, slavery and forced labour are prohibited under Article 13 of the Constitution of Jordan. A 1929 law abolishes slavery and bans the enslavement of persons.

28. The country in its Anti-Human Trafficking Law of 2009 adopts a similar definition of human trafficking to that contained in the Trafficking in Persons Protocol (art. 3 (b)). Trafficking in persons carries a penalty of a minimum six months' imprisonment and a fine (art. 8). A heavier penalty of up to 10 years' imprisonment with labour and a fine is imposed when the following aggravating circumstances exist: the victim is a woman, a child or a person with disabilities; the crime involves sexual exploitation or organ removal; the crime causes victims to suffer a chronic or incurable disease; the crime is committed by means of the use of weapons or threats; when the perpetrator is a relative of the victim, his or her guardian, a public official or a member of an organized criminal network for human trafficking; or the crime is transnational in nature (art. 9). Provision is also made for the proceeds of trafficking to be seized (art. 14). Trafficking offences committed by legal persons entail penalties ranging from fines to suspension and closing of businesses, and possible criminal responsibility (arts. 11 and 12).

29. In addition to the 2009 Anti-Trafficking Law, other legislation may be invoked to prosecute trafficking or trafficking-related offences. Under the Penal Code, offences are punishable that may amount to trafficking and other forms of exploitation, such as: abduction, which carries a maximum sentence of 3 years' imprisonment and a fine (art. 291); assault - up to 6 months' imprisonment or a fine (art. 306); and fondling - up to 1 year's imprisonment (art. 305). Rape entails a minimum of 10 years' imprisonment with hard labour (art. 292). However, marriage is set out as a form of reparation for women survivors of rape (art. 308). Moreover, some penal provisions do not prevent trafficking or encourage victims to denounce their exploiters; in particular prostitution is criminalized (art. 304) and soliciting prostitution and living in or frequenting brothels abroad leads to 3 years' imprisonment and a fine (arts. 310-318). In article 315, the use of one's home for the purposes of prostitution and living off the proceeds of prostitution is penalized. Additionally, under article 389, beggars are punished and anyone who forces another to beg is imprisoned for between 3 and 12 months or referred to an institution for assistance.

30. Minimum labour protection standards, which are also applicable to migrant workers, are set out in Labour Law No. 8/1996 amended pursuant to temporary law No. 26/2010. Among other provisions, the recruitment of children under the age of 16 is prohibited and safeguards are provided where children over 16 years are hired. Guarantees of wage protection, working hours, paid leave and overtime pay are also provided for. Employment of migrants is permitted with the consent of the Ministry of Labour when capability is not/not easily available in the country (art. 12A). Moreover, migrant workers are allowed to join trade unions, entitled to have employment contracts in their own language and provided minimum wage and compensation in case of unfair dismissal. However, migrant workers employed in sectors open only to Jordanian nationals or working without permits are liable to deportation (art. 12). Forced labour is not defined in Jordanian laws, which renders the accurate identification and prosecution of such cases difficult for practitioners.

31. Domestic workers and other similar categories of workers are provided with specific protection under regulation No. 90/2009, which prescribes the payment of monthly wages, regulates working hours, holidays and other conditions of service (including annual and sick leave) and health care and requires that fees for residence and work permits are covered by employers. The confiscation of passports by employers is prohibited under Passport Law No. 3/2003. Nevertheless, these norms are considered insufficient to protect domestic workers from exploitation, are not heeded by employers and are not systematically enforced by authorities, in spite of the national and international norms.

32. Recruitment agencies are subject to increased regulation that emphasizes their obligations to the Government, employers and workers. Under regulation No. 89/2009, all agencies must be licensed and deposit security bonds, and the fees that can be charged for recruitment services are limited. The recruitment of underage domestic workers, exploitation, inhumane treatment or the illegal transfer of workers to other countries result in the cancellation of the agency's licences and fines. However, complaint mechanisms are unspecified and, in general terms, such regulations are considered largely ineffective.

33. Other laws are also relevant, such as Law No. 33/1977 on the sale of body parts and Juveniles Law No. 32/2014 relating to the elimination of child labour and the protection of children and young persons.

2. Policy framework

34. The National Strategy to Combat Human Trafficking (2010-2012) launched by the National Anti-Trafficking Committee has four pillars: (a) prevention, which focuses on creation of anti-trafficking policies, raising awareness and training; (b) protection, which addresses the issue of identification, protection and support to victims and potential victims; (c) prosecution, which enhances the rule of law through specialized judicial chambers and trained members of the National Anti-Trafficking Committee; and (d) partnership and cooperation at the national, regional and international levels. The Special Rapporteur is concerned that this national strategy has remained in force since its adoption in 2010 for an initial period of two years, without revision, monitoring or evaluation of its impact in the face of the constantly changing trafficking scene.

35. The National Framework to Combat Child Labour (2011-2016) tackles the issue of child labourers aged between 5 and 17, the issue of which is believed to have increased both in magnitude and complexity with the recent influx of refugees and asylum seekers from the Syrian Arab Republic. Under the Framework, child labour is to be monitored and collective action taken by the Ministries of Labour, Education and Social Development in partnership with ILO and the United Nations Children's Fund (UNICEF).

36. In addition, the country's immigration policy based on the criminalization of irregular workers, which may include victims of trafficking, has unintended impacts on the prevalence of trafficking (see subsection B above).

3. Institutional framework

37. The National Anti-Trafficking Committee was established in 2009. It is responsible, inter alia, for drawing up anti-trafficking policy and guidelines and reviewing legislation related to trafficking. It provides assistance to victims, including by facilitating their stay in shelters and arranging their repatriation. It is also engaged in awareness-raising and cooperation with national, regional and international counterparts. The Committee can form subcommittees to fulfil its responsibilities and propose recommendations. In that regard, subcommittees were formed to draft a national strategy, to establish a referral mechanism for victims and draw up a regulation on shelters, and to identify victims.

38. The Minister of Justice chairs the Committee and the Ministry of Justice acts as its Secretariat. The Committee comprises the Secretaries-General of the Ministry of Justice, the Ministry of Interior and the Ministry of Labour, the General Commissioner of the National Centre for Human Rights, representatives of the Ministry of Social Development, the Ministry of Industry and Trade and the Ministry of Health, a senior officer of the Public Security Department and the Secretary-General of the National Council for Family Affairs.

39. The Ministry of Labour also addresses trafficking for labour exploitation through the following of its bodies: the Directorate of Domestic Workers, which provides assistance to domestic workers and monitors licensed recruitment agencies; the Directorate of Labour

Affairs and Inspection, which conducts regular work place inspection; and the Child Labour Unit, which coordinates the Government's child labour programmes, organizes child labour inspections and ensures the enforcement of child labour laws.

40. In 2013, the Counter-Trafficking Unit was established within the Public Security Department of the Ministry of Interior as a result of cooperation between the Ministries of Labour and Interior. The Unit, which is staffed by trained police and labour inspection officers, coordinates and strengthens partnerships and national anti-trafficking efforts, prosecutes traffickers and protects victims.

41. Furthermore, the National Centre for Human Rights plays a role in combating trafficking in persons, as it also receives complaints of alleged human rights violations, including those relating to trafficking in persons, and monitors detention facilities. It raises awareness, issues periodic reports on human rights violations and engages at the national, regional and international levels.

42. The Special Rapporteur commends Jordan on the establishment of the National Anti-Trafficking Committee and its initiatives to combat trafficking. However, she has observed that coordination of work between government bodies remains a challenge, partly owing to their varying level of commitment to the issue of trafficking and their understanding of trafficking and its impact on/relevance to their work. Of further concern is the lack of regular meetings. The Special Rapporteur learned that only 14 meetings had been held since its establishment seven years ago, instead of the quarterly meetings envisaged in the Anti-Trafficking Law. Moreover, CSOs engaged in combating trafficking are not specifically listed in the composition of the Committee. Although, in practice, there is ad hoc interaction with such organizations, which is made possible through article 6 (b) of the Law, this is not systematically applied.

D. Identification of trafficked persons

43. Officers of the Counter-Trafficking Unit (composed of police and labour officers) and immigration officials are primarily responsible for identifying trafficked persons in collaboration with one another. Health officials can also identify cases of trafficking for the purpose of organ trafficking. The Special Rapporteur notes with concern that the identification of victims is undertaken on ad hoc basis in the absence of standard operating procedures and hopes that the National Anti-Trafficking Committee will issue such procedures so that a more effective identification and protection of victims is realized without delay.

44. Trafficking for labour exploitation constitutes the majority of cases identified. Yet, out of 705 labour-related cases dealt with by the Counter-Trafficking Unit from 2013 to 2015, only 92 were identified as relating to trafficking for labour exploitation.[9] Similarly, out of 94,000 labour inspections conducted in the country, 10 cases concerning Egyptian migrant workers in a Qualified Industrial Zone were identified as involving trafficking and referred to the National Anti-Trafficking Committee.[10] These figures suggest that cases involving the confiscation of passports, the withholding of wages or other elements that constitute labour trafficking are often misidentified as labour offences owing to the absence of clarity on what trafficking for the purposes of labour exploitation is and what constitutes other labour cases. The low recorded rate of victims trafficked for labour exploitation identified may also be partially explained by the fact that there are only 230 labour inspectors for the whole country, of whom only a few are sufficiently trained to identify

[9] Information from a meeting with representatives of the Public Security Department.

[10] Information from a meeting with representatives of the Ministry of Labour.

labour trafficking. Inspection is also concentrated in the Qualified Industrial Zones, where visits are frequent compared to other sectors, such as construction and domestic work, where inspection is conducted mainly when complaints are lodged.

45. In the past two years, 48 female victims of trafficking for sexual exploitation and 7 male victims of trafficking for the purpose of organ removal have been identified.[11] However, information on trafficking of Jordanians for sexual exploitation was not available, which indicates that trafficking in persons in Jordan is viewed primarily as a problem concerning migrants. Nor were cases identified of trafficking involving children or the refugee and asylum-seeking population, which is prone to child and/or forced marriages of girls with foreigners, resulting in exploitative situations including forced prostitution. The Special Rapporteur wishes to emphasize that the occurrence of cases of human trafficking involving Jordanians, Syrians and refugees and asylum seekers of other nationalities cannot be dismissed and those victims can only be identified if they are actively sought.

46. Since 2013, the Counter-Trafficking Unit has maintained a national helpline dedicated to trafficked victims that operates 24 hours a day, seven days a week. The hotline is available in English and Arabic, despite the fact that trafficked persons in Jordan mostly speak other languages. The Ministry of Labour's toll-free hotline receives complaints on a number of issues related to labour violations and is available in eight languages (Arabic, Bahasa Indonesia, Bengali, Chinese, English, Hindi, Tagalog and Tamil). Regrettably, the hotline is only available during working hours and is therefore likely inaccessible to many victims, who may not have access to communication during those hours. The lack of capacity of operators to accurately identify victims from among the callers and to provide information for their protection is an additional aspect that hinders identification. The Jordanian Women's Union also has a hotline to identify human rights right violations, domestic violence and trafficking.

47. Given the influx of migrant workers, refugees and asylum seekers and the Jordanian immigration policy based on repatriation of undocumented migrants, the Special Rapporteur is concerned that victims of trafficking may not identified or are misidentified as irregular migrants, resulting in their arrest, detention and deportation. Once in the Juwaidah Correctional and Rehabilitation Centre, it is not possible for potential victims to be identified and their deportation reversed. According to practitioners, there are allegations that some victims of trafficking from among the migrant population awaiting deportation have not been identified as such, in spite of cases reported by practitioners. Yet, these persons will be deported without proper assessment of whether or not their return would be safe or whether they will be at risk of re-trafficking.

E. Protection

1. Shelters

48. Protection for identified or potential victims of trafficking is provided on the basis of referral from the Counter-Trafficking Unit. Before January 2016, trafficked victims were transferred to a government-run family and reconciliation centre for victims of gender-based violence that also provides care for trafficked women. Women and girl victims of trafficking were also referred to the shelter run by the Jordanian Women's Union, which provides protection for female victims of abuse and violence, counselling and rehabilitation services.

[11] Information from a meeting with representatives of the Public Security Department.

49. The Ministry of Social Development has run the Karama Shelter for Victims of Trafficking since January 2016. The Shelter, envisaged in the Anti-Trafficking Law, provides adequate living conditions for 100 women, men and children. At the time of the Special Rapporteur's visit, all of the victims identified were female and mainly from Bangladesh (73 per cent) and Kenya (17 per cent).[12]

50. Identified or potential victims are provided with legal, medical, psychological and other support services in collaboration with government departments, NGOs and international organizations. The work of the committed and dedicated staff in the shelters is limited by an overall lack of standard operating procedures for the provision of comprehensive support, including psychological and legal support to victims of trafficking by trained staff. For instance, although trafficked victims in the shelters come from various countries and speak different languages, there are no on-site interpreters available to assist them on a daily basis. Furthermore, the relatively short length of stay in the shelter (two months with possibility of renewal) is insufficient for the rehabilitation of victims and does not allow victims to stay throughout the lengthy court procedure for cases of trafficking. This is often cited by trafficked persons and practitioners as one of the reasons for opting not to pursue or to drop judicial action.

51. What is perhaps more alarming is the limited freedom of movement of assisted victims who can leave the shelter only accompanied by police officers. The safety of trafficked persons is the main reason cited by authorities and the National Centre for Human Rights for such action. The Special Rapporteur is concerned that, in effect, such shelters are equivalent to detention centres and protection measures result in further violations of victims' human rights.

52. Some CSOs have the capacity to provide protection and assistance to victims of trafficking. For instance, their support is sought for legal and other assistance, although that is often on ad hoc basis. The Special Rapporteur hopes that the project being considered by the Ministry of Social Development to enable NGOs to manage government shelters based on international standards will be implemented, taking into consideration, inter alia, the needs of victims and the capacities and autonomy of NGOs. Additionally, CSOs are currently not able to refer trafficked persons to the government shelter as access to this shelter is only allowed through referrals from the Counter-Trafficking Unit. The Unit can, however, refer victims to NGO-run shelters. The Special Rapporteur hopes that a more effective collaboration with CSOs can be realized without delay.

53. Moreover, the employment agencies' union has an informal residence for stranded migrant workers, including potential victims of trafficking. Accounts of victims with whom the Special Rapporteur interacted systematically mentioned the deplorable conditions of the venue, which did not provide any services. The Special Rapporteur is encouraged by the intention of the Ministry of Labour to establish a new shelter for domestic workers. Similarly, some embassies, such as those of Bangladesh, the Philippines and Sri Lanka, provide temporary shelter and assistance to their exploited workers, including trafficked individuals seeking refuge after having fled abusive employers.

2. Non-criminalization of trafficked persons

54. The strong political inclination towards criminalizing and prosecuting irregular migrants may have unintended negative consequences for victims of trafficking, in spite of protection envisaged against criminalization of trafficked persons for offences committed in relation to or induced by their status as victims of trafficking (art. 12 of the Anti-Trafficking Law). The order for exemption from criminalization is initiated on a case-by-

[12] Information from a meeting with representatives of the Ministry of Social Development.

case basis by the Public Prosecutor and is subject to the approval of a standing committee consisting of the Chief of Public Prosecution as chairperson and two cassation judges nominated by the Chief Justice. There is credible information that migrant victims of trafficking who are found to have violated the Residency Law (for example, by overstaying their permit or because their work permit was not processed by the employer) do not benefit from deportation exemption.[13] In addition, the criminalization of persons engaging in sexual activities who could be forced into prostitution also deters victims of sexual trafficking from reporting to the police.

55. As a result, many irregular migrants are afraid to contact the authorities and avoid seeking legal protection and remedies, even when they are entitled to them. In fact, that approach leads to the criminalization of victims for crimes committed while being trafficked and for which they should not be held liable.[14]

F. Investigation, prosecution and punishment

56. Preliminary investigation of trafficking cases is undertaken by officers of the Counter-Trafficking Unit, in cooperation with the police unit dedicated to countering prostitution and to tourism, labour inspectors and health officials. On the basis of the outcome of the inquiry, the Public Prosecutor indicates that a person is a victim of trafficking in need of protection, refers him or her to the shelters and files the trafficking case with the court. Whereas those not found to be victims by the public prosecutors are immediately deported.

57. The Special Rapporteur acknowledges the efforts undertaken to investigate trafficking cases. Several training sessions, an exchange of experience with international counterparts and the development of a training manual on investigation of trafficking cases have been carried out in coordination with the United Nations Office on Drugs and Crime and the European Union, for a uniform approach to dealing with cases of trafficking. However, a number of factors have hampered the effective and swift investigation of trafficking cases. They include limited coordination among enforcement agencies and a lack of the necessary skills to separate cases of trafficking from labour, immigration and other crimes or violations. Lack of communication with trafficked persons owing to language barriers also affects investigation. Moreover, it has been brought to the Special Rapporteur's attention that, on several occasions, victims who wished to pursue prosecution changed their mind and were repatriated following alleged intimidation by police. She was also informed that labour trafficking cases were mostly settled through mediation, which includes repatriation, the restitution of full or partial wages and identity documents and the cancellation of overstay fines.

58. As a result, prosecution rates are low. According to the Public Prosecutor's Office, seven cases of trafficking were prosecuted in 2015: three cases involved forced labour exploitation and domestic servitude, three were for sexual exploitation and one for the purpose of organ removal.[15] However, only three convictions were secured in those cases of labour exploitation, two ended in acquittals, one case was not prosecuted out and the rest were still pending trial.[16] Instances of appeal to higher courts were even fewer. For instance,

[13] See Tamkeen Center for Legal Aid and Human Rights, *Between a Rock and a Hard Place: migrant workers' caught between employers' abuse and poor implementation of the law - the status of domestic workers and Egyptian workers in Jordan* (2012).

[14] See the Principles and Guidelines on Human Rights and Human Trafficking.

[15] Statistics provided by the National Anti-Trafficking Committee.

[16] Information from a meeting with the Public Prosecutor.

from 2012 to 2015, the courts of cassation addressed only seven cases of trafficking, three involving labour exploitation, three involving sexual exploitation and one organ removal.[17] The Special Rapporteur highlights that, given the role and involvement of employment agencies in trafficking migrant workers, especially domestic workers, action against such agencies remains limited; although she noted with appreciation that, in 2015, 24 employment agencies were closed and 14 suspended following prosecution on trafficking charges.

59. Another concern affecting the investigation and adjudication of possible trafficking cases is the lack of sufficient capacity of prosecutors and officers of the Counter-Trafficking Unit in the implementation of the Anti-Trafficking Law, in spite of training. Lack of clarity of what constitutes trafficking for forced labour also affects the investigation and adjudication of possible trafficking cases and leads to perpetrators being indicted and eventually convicted for other crimes with lesser punishments.

60. The authorities also cited the reluctance of victims to cooperate with law enforcement authorities as one of the main reasons for low prosecution rates. While noting that assistance to victims should be provided irrespective of their collaboration with authorities, the Special Rapporteur wishes to highlight that short reflection periods (two months with the possibility of extension), lengthy trials and limited legal counselling and representation, interpretation assistance and information on the case, as well as confinement in shelters, the inability of victims to work while in confinement, fear of reprisal when reporting traffickers, detention for immigration-related offences and deportation, are factors that further discourage victims of trafficking from collaborating with the enforcement authorities. The accumulation of overstay fines throughout the duration of the legal procedure is another strong disincentive that leads migrant workers to opt out of judicial proceedings.

G. Redress

61. Compensation and restitution are an integral part of effective remedies for victims of trafficking under international law and standards.[18] In Jordan, compensation for victims is not specifically addressed in the Anti-Trafficking Law.

62. Nevertheless, assuming that victims are aware of their rights and benefit from legal assistance, it is possible for them to file separate civil and criminal claims for compensation. However, information on such cases was not available. Tying restitution to the successful conviction of perpetrators in civil and criminal proceedings requires victims' cooperation in judicial processes and prevents those victims who are reluctant to file complaints against their traffickers and those whose cases are unsuccessful in court from obtaining restitution and compensation. Moreover, victims of labour trafficking who file cases against their employers risk deportation as a result of the cancellation of their work and residence permits by those employers. In the face of those obstacles, many victims opt to give up their rights to pursue such claims, even if their cases are compelling.

63. It is encouraging that the possibility of establishing a fund to provide trafficked persons with compensation is being envisaged. The fund could be financed by the seizure of assets acquired or earned by committing the trafficking crimes enumerated in the Anti-Trafficking Law (art. 14).

[17] Statistics provided by the Court of Cassation

[18] Article 6 (6) of the Trafficking in Persons Protocol and guideline 9 of the Principles and Guidelines on Human Rights and Human Trafficking.

64. A reflection and recovery period for identified or presumed victims, throughout which services are provided to them, is also another element of effective remedy. The Special Rapporteur considers that the two months during which identified victims stay in the government shelter short for recovery (although a stay can be extended in exceptional cases). Given the recent opening of the shelter, not all of the planned vocational, psychological, and social assistance was available at the time of the visit. Legal assistance is provided to victims by a small number of NGOs, mainly in Amman, which has an impact on the recovery of victims outside the capital.

65. The Special Rapporteur is of the view that a permanent or temporary residence permit and a work permit should be granted to victims as an appropriate form of remedy, at least for the duration of their period of reflection and during criminal, civil or administrative proceedings, or even longer if return is not in the best interest of the victim. This is particularly pertinent in Jordan, where most trafficked persons have migrated to the country for labour purposes and incurred substantial fees in order to sustain their families back home. In those circumstances, migrants experiencing trafficking are likely to be re-trafficked upon their return as the underlining cause of trafficking, namely poverty and a lack of opportunities, that compelled them to migrate persist.

66. Another important means of redress, specifically for victims of labour trafficking, is the recovery of unpaid wages. While not provided for under the Anti-Trafficking Law, victims of domestic servitude and exploited domestic workers particularly may nevertheless raise claims against their employers and agents with the Labour Conflict Resolution Committee for domestic workers, composed of representatives of the Ministry of Labour, the Ministry of Interior, the Borders and Residence Directorate, recruitment agencies, the embassies concerned and other bodies. The Counter-Trafficking Unit has also been assisting some victims to obtain their unpaid wages.

H. Repatriation and reintegration

67. Repatriation is the fate of all victims of trafficking, either repatriation to their country of origin or any other country of their choice that accepts them.[19] However, it is not clear what the procedures for repatriation are or what safeguards are in place to ensure victims' safety and avoid their re-victimization. The procedures in place to enable victims concerned to access refugee and asylum claims are also not clear.

68. A number of factors hamper the swift repatriation of trafficked persons identified. All trafficked persons awaiting deportation with whom the Special Rapporteur exchanged noted the lengthy time needed to process the recovery of their unpaid wages and the cancellation of accumulated overstay fees by the Ministry of Interior or the Council of Ministers (art. 34 (b) of the Residency Law). Nearly all preferred to go home without their money and look for other employment opportunities in their country or elsewhere, rather than waiting to receive the arrears of their unpaid wages. Lack of cooperation by embassies and the unavailability of funds to cover travel expenses to their homes also had an impact on their return. The Special Rapporteur recalls that repatriation of trafficked victims should be safe and, to the extent possible, voluntary.[20]

69. Information on reintegration was not available. Nevertheless, the Special Rapporteur recalls that, by virtue of their status as victims, trafficked persons are entitled to reintegration as part of their stay in the country or their safe repatriation. This reintegration assistance makes it less likely for them to be re-trafficked. Moreover, the Special

[19] Article 5 (c) of the Anti-Trafficking Law.

[20] See the Principles and Guidelines on Human Rights and Human Trafficking.

Rapporteur is alarmed that the possibility of reinsertion of trafficked persons within Jordanian society is not provided for either in law or practice.

I. Prevention

1. Public awareness

70. The Government has taken a number of measures aimed at preventing trafficking in persons, primarily in the form of awareness-raising campaigns and publications targeting migrant workers in Arabic, Bahasa Indonesia, English, Sri Lankan and Tagalog.[21] Media such as radio, television and websites were also used to raise public awareness about trafficking issues. NGOs, international organizations, the National Centre for Human Rights and some embassies also contribute to the dissemination of information. Capacity-building activities targeting law enforcement and government officials, the judiciary, migrant workers, employers, employment agencies (including those in the Qualified Industrial Zones) and refugees and asylum seekers have been held in all provinces. Yet, despite the increased attention devoted to the issue, stakeholders have expressed concern about the difficulty of ensuring that trafficked persons, those at risk of being trafficked or otherwise exploited, their employers and employment agencies are not fully aware of what human trafficking is or how to get assistance.

71. Prevention measures targeting refugees and asylum seekers include the free-of-charge registration of marriages and divorces in the camps by religious courts and civil registration authorities, as registration reduces the risk of child and/or forced marriage, servile marriages and marriages resulting in sexual exploitation. Counselling on the risks associated with return is also provided for refugees and asylum seekers electing to spontaneously return to the Syrian Arab Republic, particularly single women and unaccompanied and separated children. The Special Rapporteur commends cooperation between Jordanian authorities and UNHCR in the management of refugee camps, and encourages them to include the identification of situations or risks of trafficking in the training of personnel working in the camps. Opportunities to minimize risks and circumstances leading to exploitation and trafficking of refugees and asylum seekers, such as debt bondage, should be identified upon refugees and asylum seekers' arrival in Jordan.

72. Moreover, the Special Rapporteur is pleased to learn of the Government's intention to open up its labour market and allow refugees and asylum seekers to conduct other self-reliance activities through the Jordan Response Plan, 2016-2018,[22] which would reduce the risk of trafficking for sexual exploitation and labour exploitation, in addition to reducing social tensions and fostering social cohesion. Another pilot project planned by the Ministry of Labour and UNHCR aims to provide work opportunities for refugees and asylum seekers to work in the agricultural and garment sector in the Qualified Industrial Zones by subsidizing their work permits.

73. Addressing demand is another prevention strategy, which, in the context of Jordan, means predominantly demand for exploitative labour of migrant workers, including domestic workers.

74. On the other hand, there is a need to safeguard employers who have incurred expenses to bring in domestic workers in order to stop the practice of withholding migrants' passports. In that regard, there are encouraging discussions taking place on establishing

[21] See National Anti-Trafficking Committee, "First report on combatting human trafficking in Jordan (2009-2013)".

[22] See http://www.jrpsc.org/

insurance for employers. There is also a critical need to raise the awareness of other forms of trafficking, including internal trafficking, trafficking of children and trafficking for sexual exploitation.

2. Safe migration

75. Current immigration practices do not provide sufficient protection to the migrant labour force, which includes refugees and asylum seekers, from the risk of exploitation and trafficking.

76. In that regard, more opportunities for safe migration, i.e., legal, gainful and non-exploitative migration, are needed if Jordan is to effectively discourage demand for exploitable labour and fulfil its obligations to respect, protect and promote the labour rights of all workers, including migrants.

3. Public-private partnerships

77. Globally, the prevention of trafficking through public-private partnerships is gaining ground. Through self-regulatory mechanisms, such as corporate social responsibility, businesses have taken steps, inter alia, to try to remove from their supply chains forced labour.

78. The Special Rapporteur was pleased to learn about the Better Work Jordan programme (2008-2017) of the Ministry of Labour, in partnership with ILO and the International Finance Corporation, which aims to improve compliance of enterprises in the garment industry with labour standards and enhance working conditions while promoting competitiveness and economic performance. In that regard, she notes that the business competitiveness of the apparel sector in Jordan within the global supply chain was assessed against core international labour standards and national labour laws, particularly in relation to discrimination, forced labour, child labour, compensation, working hours and contracts. Advisory and training services on how to improve compliance by increasing workplace cooperation are also provided.[23] She encourages the use of such tools to identify and eliminate labour trafficking cases from the Jordanian textile industry, as well as other respectable national, international and multinational businesses in Jordan.

79. Moreover, human trafficking is further addressed though labour initiatives focusing on the improvement of working conditions in clothing companies, such as the practice of drawing up a "golden list" of national companies with good training and employment records and the ranking of organizations not complying with obligations under the Labour Law.

J. Cooperation and partnership

1. Cooperation with civil society

80. The contribution of and collaboration with CSOs are crucial in the fight against human trafficking. The National Strategy to Combat Human Trafficking foresees the implementation of some of the activities in cooperation with CSOs with relevant knowledge and skills. However, in practice, only a very limited number of CSOs take part in the National Anti-Trafficking Committee on an ad hoc basis and somewhat contribute to its anti-trafficking work, particularly in the provision of assistance to victims. There is a need for immediate steps to be taken to strengthen the legal framework and support, in order to enable a larger pool of potential service providers and CSOs to, among others,

[23] See http://betterwork.org/jordan/?page_id=30#sthash.WSZHUxJ0.dpuf.

provide protection and assistance to victims, including by running shelters, providing counselling to victims and providing vocational training.

2. International, regional and bilateral cooperation

81. Jordan has concluded a number of memorandums of understanding on labour migration and trafficking with countries such as Egypt, Indonesia, the Philippines and Sri Lanka and works closely with other embassies in the country. Jordan also benefits from cooperation with the United Nations and international and regional organizations in areas such as training, assistance to victims of trafficking, repatriation and awareness-raising.

82. Internationally, Jordan benefits from exchanging information and good practices in the area of trafficking with the International Criminal Police Organization (INTERPOL) and Euro-Mediterranean Partnership (EUROMED) police. The investigation and analysis capacity of the Public Security Department is in compliance with European Union and international standards (ISO 17025), following a twinning programme in 2010.[24]

83. At the regional level, Jordan is actively engaged in the drafting of the anti-trafficking convention. Jordan also played a role in the inclusion of trafficking in the Code of Conduct concerning the repression of piracy and armed robbery against ships in the Western Indian Ocean and the Gulf of Aden (the Djibouti Code of Conduct).

III. Conclusions and recommendations

A. Conclusions

84. The Special Rapporteur recognizes the efforts of Jordan to prevent and fight trafficking in persons, as reflected in the establishment of the National Anti-Trafficking Committee, the Counter-Trafficking Unit within the Public Security Department and the Karama Shelter for Victims of Trafficking. Under labour laws, migrant workers, including domestic workers, are also protected, labour inspections in businesses and households are envisaged and employment agencies regulated. However, better implementation is needed, along with regular monitoring and sanctioning. Initiatives such as the Better Work Jordan programme, the accreditation of businesses in the "golden list" and the ranking of organizations not complying with obligations under the labour law further improve the implementation of labour standards while promoting business competitiveness.

85. Human trafficking in Jordan is perceived as mainly involving labour exploitation of non-Jordanians, with little attention paid to other forms of trafficking, including trafficking for sexual exploitation, begging and organ transplant, which can involve Jordanians, migrants and the refugee and asylum-seeking population. In the absence of an updated national strategy to combat trafficking and standard operating procedures, it is difficult to address trafficking in a coordinated manner.

86. Given the influx of migrant workers, refugees and asylum seekers, the country's restrictive immigration policy focused on rapid deportation of irregular migrants does not provide the opportunity for accurate identification of and provision of assistance to victims of trafficking. The number of victims identified and assisted is

[24] See European Union, *Implementation of the European Neighbourhood Policy in 2010, Country Report: Jordan*, joint staff working paper. Available from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011SC0648.

still low. Similarly, the rate of prosecution of trafficking cases also remains very low due to insufficiently clear anti-trafficking laws, which perpetuates the impunity of traffickers and obstructs victims' access to justice.

87. The Special Rapporteur has serious concerns that the stay of victims of trafficking in shelters may amount to detention. In addition to infringing fundamental human rights relating to liberty of movement and protection from detention,[25] that presents a risk to their well-being. Staff in the shelters, despite being committed, require specialized training and capacity-building. While acknowledging the Government's efforts to raise awareness, the Special Rapporteur notes that prevention is still at an early stage and does not target all the population at risk, including refugees and asylum seekers outside camps, domestic workers, employers and employment agencies.

B. Recommendations

88. On the basis of the above findings, and in spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to Jordan:

(a) Ratify without delay the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families; ILO Domestic Workers Convention, 2011 (No. 189); ILO Protocol of 2014 to the Forced Labour Convention, 1930 ,and the ILO Private Employment Agencies Convention, 1997 (No. 181); the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;

(b) Establish and, where already in existence, implement bilateral and multilateral agreements for the exchange of information, mutual legal assistance and safe returns in order to jointly tackle the root causes of trafficking in persons;

(c) Work with source countries to ensure prevention and awareness-raising.

89. With regard to the national framework:

(a) Expedite the revision of the Anti-Human Trafficking Law and other relevant policies in compliance with the requirements of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Inter alia, the amendment should have a clearer separation of the means and purposes of trafficking. It should also focus on human rights approach and provide victims in shelters with freedom of movement, a regular stay and employment in Jordan while awaiting the outcome of their legal proceedings and beyond. It should further ensure non-criminalization of victims for all crimes committed in relation with their status as victims and compensation for victims, and make CSOs officially part of the National Anti-Trafficking Committee;

(b) Develop and increase options for safe migration and legal employment channels, acknowledging that the current approach to migration management, especially in relation to the impact of the sponsorship system and the recruitment of migrant labour via some unscrupulous employment agencies, may at times favour the activities of traffickers;

[25] OHCHR, Human Rights and Human Trafficking Fact Sheet No. 36, pp. 18–19, and report of the Working Group on Arbitrary Detention (A/HRC/22/44), paras. 55 and 57.

(c) **Enforce labour regulations in order to provide greater protection to migrant workers, including domestic workers, as well as refugees and asylum seekers seeking employment, in accordance with international legal standards. Ensure that frequent inspections are conducted in trafficking-prone sectors and in households;**

(d) **Revise and enforce stringent regulation of employment agencies, regularly monitor the activities of those agencies already licensed and take immediate action to revoke their licences and prosecute them where illegal activities involving trafficking in persons have been found to take place;**

(e) **Evaluate the outcomes and lessons learned of the National Strategy to Combat Human Trafficking (2010–2012); finalize and rapidly adopt, after concertation with all stakeholders, a national plan of action taking a human rights and victim-centred approach, set out clear objectives, responsibilities and indicators to measure progress, and allocate a dedicated budget for its implementation;**

(f) **Carry out a national baseline study in collaboration with independent research institutes, bilateral partners and civil society to document the scope and trends of trafficking at the national level. Ensure that the study addresses all forms of human trafficking, its causes and consequences, particularly trafficking involving refugees and asylum seekers in and outside camps, as well as internal trafficking of Jordanians;**

(g) **Establish a systematized and harmonized data collection system to include victims' countries of origin, sex, age and the nature and type of trafficking involved; the system should also include information on traffickers and data on investigations, prosecution rates and sentencing.**

90. **With regard to identification, training and capacity-building:**

(a) **Urgently establish standard operational procedures for the identification of all forms of trafficking and of referral of victims, defining red flags and indicators to look for while screening vulnerable persons, who include Jordanians, undocumented migrants, refugees and asylum seekers and stateless persons;**

(b) **Ensure that victims of trafficking can be identified, even when they are in immigration detention centres to avoid their repatriation and re-victimization;**

(c) **Establish appropriate tools and indicators to enable labour inspectors to identify victims of trafficking during labour checks, including in agriculture, the construction sector, garment industries and households, accompanied by immediate protection measures for victims of forced labour;**

(d) **Provide legal clarity on the elements of trafficking to enable the judiciary to enforce the law;**

(e) **Raise awareness of the distinction between cases of trafficking and other situations, including irregular migration, labour violations and prostitution, to facilitate accurate identification of victims by front-line officers;**

(f) **Continue providing comprehensive training programmes on trafficking in persons to enhance the knowledge and awareness of all stakeholders, including police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers/businesses, employment agencies, CSOs and the media;**

(g) **Train all service providers involved in the assistance and care of victims of trafficking.**

91. With regard to the support service for victims of trafficking:

(a) Protect and assist all victims of trafficking, including victims of labour trafficking and domestic servitude, with full respect for their human rights;

(b) Make provision for unconditional and appropriate assistance, including social, psychological, medical and legal support, as well as translation assistance and interpretation services in shelters, in accordance with article 6 (6) of the Trafficking in Persons Protocol. Such assistance must be provided to all victims whether referred to services by the police or by NGOs. Ensure victims inside shelters have freedom of movement, access to employment and residence in the country;

(c) Enable adequately funded service providers and CSOs working on trafficking in persons as preferred option to manage shelters and to provide comprehensive assistance, such as social, psychological, medical and legal support, as well as translation and interpretation services, for victims of trafficking;

(d) Provide victims of trafficking who do not wish to return to their countries owing to fear of retribution, hardship or re-trafficking viable alternatives to remain and work legally in Jordan, including through granting special residence and work permits;

(e) Establish tools with clear procedures and safeguards to avoid re-victimizations during the repatriation, reintegration and reinsertion of trafficked persons in Jordan, the source country or a third country.

(f) Ensure that the free 24-hour trafficking hotlines are accessible in the languages that may be the only ones that potential victims speak and are serviced by multilingual staff who have received specialized training on trafficking in persons;

(g) Maintain close cooperation with international and regional organizations, particularly the International Organization for Migration and UNHCR, as well as diplomatic missions, for the safe return of trafficked victims to their country of origin, having due regard to the need, if any, for international protection of the victims and the application of the principle of non-refoulement;

(h) Establish a national fund that will provide for a comprehensive compensation scheme for victims of trafficking;

(i) Ensure that appropriate procedures are in place to evaluate the best interests of the child during the stage of identification, protection and assistance and before making any decision on the eventual repatriation of the child.

92. With regard to prosecution:

(a) Improve the justice delivery system to ensure speedy investigation and adjudication of cases of trafficking while guaranteeing fair-trial rights consistent with a human rights-based approach to criminal justice responses;

(b) Ensure due implementation of victim and witness protection, in the prosecution of cases of trafficking, before, during and after the trial to avoid reprisal;

(c) Ensure that the best interests of the child is at the heart of the criminal justice response in case involving children;

(d) Strengthen the capacity of judicial officials to prosecute trafficking cases;

(e) Consider establishing specialized sections in criminal courts and/or prosecutor's offices in order to achieve better results in the repression of trafficking by trained judicial officials.

93. **With regard to the prevention:**

(a) **Step up efforts to raise awareness about all forms of trafficking in persons, including for domestic servitude, forced labour and sexual exploitation, in order to promote understanding of what constitutes trafficking among the general population, the migrant community, refugees and asylum seekers, employers and employment agencies;**

(b) **Conduct surveys to assess the impact of the awareness-raising campaigns, which should be extended to the whole country and especially to areas where there is a high concentration of persons in vulnerable situations. Moreover, awareness-raising material should be made available in multiple languages;**

(c) **Empower non-governmental organizations, including through increased interaction and the provision of funds, to conduct sensitization on trafficking and to handle complaints related to trafficking;**

(d) **Fast-track the establishment of appropriate insurance for employers to prevent labour practices amounting to trafficking in persons;**

(e) **Mainstream anti-trafficking prevention measures in all information, counselling and awareness-raising activities addressed the refugee and asylum-seeking population in and outside camps;**

(f) **Integrate identification tools on trafficking within screening, registration and assistance process of Syrian refugees and asylum seekers arriving in Jordan, especially those living in camps;**

(g) **Continue to cooperate with UNHCR, the Civil Registration Department and religious courts in order to prevent child and/or forced marriages that could result in sexual slavery and forced prostitution through free-of-charge registrations;**

(h) **Pursue the intention to open up the labour market to refugees and asylum seekers to prevent labour and sexual exploitation of this vulnerable population.**

94. **With regard to the engagement with businesses:**

(a) **Sensitize businesses about human trafficking and encourage them to make and maintain a supply chain free from trafficking, including through the establishment of self-regulatory mechanisms and tools;**

(b) **Develop and enforce stringent regulations regarding employment agencies, regularly check the activities of those already licensed, revoke their licences and prosecute them in cases of illegal action involving trafficking in persons;**

(c) **Use existing initiatives such as the ILO Decent Work Programme to address human trafficking for the purpose of labour exploitation and include identification of trafficking as one of the indicators used to measure the accreditation of businesses in the "golden list" and the ranking of organizations not complying with obligations under the Labour Law**